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APPLIANCE EFFICIENCY STANDARDS

COMPLETED
178

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
ENERGY CONSERVATION AND POWER

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

ON

H.R. 6202

A BILL TO AMEND THE ENERGY POLICY AND CONSERVATION ACT TO ELIMINATE PREEMPTION OF A STATE'S AUTHORITY TO ESTABLISH OR ENFORCE ANY ENERGY EFFICIENCY STANDARD OR SIMILAR REQUIREMENT IF A FEDERAL ENERGY EFFICIENCY STANDARD HAS NOT BEEN ESTABLISHED

JULY 29, 1981, AND MAY 21, 1982

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APPLIANCE EFFICIENCY STANDARDS

WEDNESDAY, JULY 29, 1981

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Energy Conservation and Power,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2322, Rayburn House Office Building, Hon. Richard L. Ottinger (chairman) presiding.

Mr. Ottinger. The subcommittee will come to order.

Today the Subcommittee on Energy Conservation and Power will continue hearings on appliance energy efficiency standards. We had a set of previous hearings several months ago.

On February 17, 1981, the Department of Energy announced that it "would not issue national appliance energy efficiency standards until the analysis upon which the standards would be based is reviewed for its sufficiency." It is now 6 months later with no demonstrable evidence for public consumption that the DOE is any closer to a final rule.

The Department's action was in violation of the National Energy Conservation Policy Act [NECPA] which directed DOE to prescribe a final regulation covering nine appliance products by January 2, 1981.

This subcommittee will not tolerate any attempt to administratively repeal existing laws through regulatory delays. Any endeavor to circumvent Congress or frustrate the law's intent will be viewed as a serious violation of law which the subcommittee will pursue to its fullest power in Congress and, if necessary, in the courts.

The Reagan budget cut for appliance standards implies a predetermined conclusion about the determination of Congress on the proposed standards. The longer the rulemaking period continues, the more it appears to provide paperwork and confusion rather than resolution and illumination.

The nine products covered in DOE's proposed standards in June 1980 consume 19 percent of our national energy and 90 percent of our residential use. These nine products for which final rules are past due consume 28 percent of the Nation's natural gas; 6.3 percent of its oil, and 31 percent of its electricity. It is quite clear that what we are talking about here, therefore, is very significant savings of energy. The purpose of these energy conservation regulations is to save energy, to reduce dependence on foreign oil and gas, and to protect and sustain our domestic supplies.

The Department of Energy has projected that these standards would save this country between 2.3 and 2.4 billion barrels of oil by the year 2005 and save consumers an estimated $29.4 billion in utility costs.

The administration's philosophers have contended that because of consumer demand, the marketplace will produce as much energy efficiency as would these standards. Although this argument may be true for some products, it is patently ridiculous when applied to appliances.

According to the most recent study by Lawrence Berkeley Laboratory, over 50 percent of the appliances sold in the United States are sold to someone other than the final consumer. In other words, most buyers are developers and builders whose primary interest is to buy the cheapest possible appliances. They will not be around to pay the high fuel bills once they have sold the property.

I would like to note that appliance manufacturers originally supported this legislation at the time of its passage because they believed that Federal preemptive power would protect them from a patchwork of different State standards. The industry seems to have decided that the Reagan administration will let it have its cake and eat it too; that is, no Federal standards will be issued, but the Federal Government will use its preemptive power to eliminate any State standards.

I have no intention of standing by and watching this administration make a mockery of the law by turning back the clock on those States that have been enlightened enough to improve the efficient use of energy within their borders.

We are pleased to have with us today Mr. J. Hunter Chiles III, the Director of the Office of Policy, Planning and Analysis, and Mr. Joseph J. Tribble, the Assistant Secretary for Conservation and Renewable Energy who is accompanied by Dr. Maxine Savitz, with whom we have worked for many years on associate conservation matters.

We are pleased to have you with us to gain some insight as to what the administration's position is going to be with respect to this very important matter.

We will put your full statements in the record. There are an enormous number of questions that need to be covered. Unless any of you have a burning desire to make an opening statement, in which case you are free to do so, we will put your statement in the record and proceed.

I would like to get at the question of your interpretation of the legality of the procedures, first of all.

The NECPA statute cites a rule describing an energy efficiency standard. This may not be published earlier than 60 days after publication after the ANOPR—advanced notice of proposed rulemaking—and it says:

> Such rule shall be published as soon as practicable after such 60-day period but in no event later than 2 years after publication of the advance notice.

That is not a target, it is a statutory requirement and I want to know the basis on which you feel that statutory requirement can be ignored.

Mr. Tribble or Mr. Chiles, you are free to answer, whoever would like to, or Dr. Savitz.

STATEMENT OF JOSEPH J. TRIBBLE, ASSISTANT SECRETARY FOR CONSERVATION AND RENEWABLE ENERGY, DEPARTMENT OF ENERGY, ACCOMPANIED BY J. HUNTER CHILES III, DIRECTOR, OFFICE OF POLICY, PLANNING, AND ANALYSIS, MAXINE SAVITZ, DEPUTY ASSISTANT SECRETARY FOR CONSERVATION, AND EUGENE MARGOLIS, SENIOR STAFF ATTORNEY, OFFICE OF THE GENERAL COUNSEL

Mr. Tribble. My name is Joseph J. Tribble, Assistant Secretary for Conservation and Renewable Energy in the Department of Energy.

Mr. Chairman, we do not intend to ignore that, if I understood the question correctly. We realize that we are behind schedule with this. There have been some reasons for it that I would like to give to you.

We are working on it and I must say at this time that I think this hearing has been very beneficial because it has focused attention on this subject and we have been able to resolve some of the internal differences of opinion that we have had, so that we feel that we are in a position to move forward rather directly.

I would be pleased to go ahead with this discussion or respond to whatever questions you have.

[Mr. Tribble's prepared statement follows:]

STATEMENT
JOSEPH TRIBBLE
ASSISTANT SECRETARY FOR CONSERVATION
CONSERVATION AND RENEWABLE ENERGY
HOUSE ENERGY AND COMMERCE COMMITTEE
July 29, 1981

Mr. Chairman, I would like to address the Energy Conservation Program for Consumer Products Other Than Automobiles, often referred to as the Appliance Efficiency Program.

A primary objective of the program is to reduce energy consumption in the residential sector by requiring manufacturers to increase the operating efficiencies of major household consumer products. Current energy consumption trends clearly demonstrate the strong consumer interest in energy efficiency. This high and increasing level of consumer concern provides market signals to manufacturers to persuade them to introduce more energy efficient products. A mandatory standards program would impose a heavy regulatory burden on appliance manufacturers; such a burden is not needed, given the, market-oriented energy policy of this Administration.

The Appliance Standards program was mandated by the Energy Policy and Conservation Act (EPCA - P.L. 94-163) as amended by the National Energy Conservation Policy Act (NECPA - P.L. 95-169). The law requires the Secretary of the Department of Energy to take action in three specific areas:

(1) Develop, promulgate, and update test procedures for the thirteen major residential appliances (refrigerators and refrigerator/freezers, freezers, dishwashers, clothes dryers, water heaters, room air conditioners, home heating equipment, not including furnances, television sets, kitchen ranges and ovens, clothes washers, humidifiers and dehumidifiers, central air conditioners, and furnaces) listed in Section 322 of the legislation.

(2) Develop and implement, as specified in Section 337 of the legislation, a program to educate consumers and other persons with respect to the significance of estimated annual operating costs, and the ways in which comparative shopping can save energy for the Nation and money for consumers.

(3) Make a determination on the need for minimum energy efficiency standards and promulgate the standards if it is determined that standards are technologically feasible, economically justifiable, and will result in significant energy savings. This is specified in Section 325 of the legislation.

(1) Test Procedures

DOE has developed and promulgated test procedures for all thirteen major residential appliances. The law provides for adding "other" product types, but DOE has to date not exercised this discretionary authority. Test procedures are utilized by all manufacturers to compute energy consumption and cost of energy used in the operation of the applicances. This information is the basis of the Energy Guide Labels used in the FTC Appliance Labeling Program. The test procedures are also utilized by manufacturers to substantiate any representations made in written or broadcast media advertisements. As required by Section 323 of the Act a program is in place to update and revise the test procedures as necessary. The program includes: a mechanism by which manufacturers of products which cannot be tested under the existing test procedures, or for which the existing test procedures provide unrepresentative values, can apply to DOE for a test procedure waiver.

We believe that the presence of labels on the major consumer appliances will increase consumer awareness of the advantages of purchasing energy efficient products and will encourage consumers to demand the availability of higher efficiency products. Consequently, the FY 1982 budget allocates $600K to continue to update the test procedures in support of the FTC Appliance Labeling Program.

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(2) Consumer Education

DOE during the past two years developed and conducted a consumer education and awareness program in support of the FTC Appliance Labeling Program. With a budget of less than one million dollars per year, we reached more than 86 million consumers through newspaper, radio, TV, and magazine articles and announcements regarding the Appliance Labeling Program.

In addition, workshops were conducted for retailers and sales persons on the use of appliance labels as a sales tool. DOE believes that now that the labeling program is in place, the role of DOE in this area has been completed, and that the private sector can meet any additional need for consumer education. Evidence already is available that companies are using the energy efficiency of their products as selling point in their advertising. Therefore, the FY 1982 abudget does not allocated any funds to continue the appliance labeling consumer education effort.

(3) Standards

DOE in June 1980 issued a proposed rule covering the nine priority products specified in the law, recommending that standards be set for various types or classes of eight consumer products, and outlining a certification and enforcement program. "Space reserved" was assigned to the ninth product type (home heating equipment, not including furnances). The proposed rule received some support, but also came under considerable attack by both the industry and other Federal agencies (Department of Justice, Small Business Administration, and the Regulatory Analysis Review Group). Most of the more than 2000 comments dealt with the economic burden the certification and enforcement program would place on the industry. The support of the standards that was offered by some segments of the industry was offered, in large part, because an industry preference for a uniform, Federal standards program rather than separate and varying State standards.

By law, DOE was required issue a final rule regarding these eight products by January 2, 1981. In mid-December, DOE notified Congress that the January 2, statutory date would not be met due to the need to analyze the large volume of public comments received and the complexity of the many issues raised.

On February 17, DOE issued a Notice of Intent not to issue standards until such time as an analysis of the revised data upon which the standards would be based is reviewed for its sufficiency. The first stage of this effort was an independent review by experts within DOE. In response to this internal review, the program office made revisions to its analysis. DOE intends to publish a document for public comment soon.

I would like to point out, however, that with the decontrol of oil and the gradual decontrol of natural gas, combined with the implementation of the FTC Appliance Labeling Program, manufacturers will have substantial incentives to make available higher efficiency consumer products without the establishment of a potentially burdensome Federal regulatory program.

Future Plans

DOE believes the work undertaken in the past has produced useful and results and that there need to be no longer-term consideration of Federal appliance efficiency standards. We are planning to take the useful knowledge gained from this program and make it available to manufacturers and consumers through informational and voluntary programs.

That concludes my formal statement. I would be happy to answer any questions you may have.

Mr. OTTINGER. Well, given the fact that there was a new administration coming in and a need for taking a look at what was going on, the committee has been tolerant in terms of pursuing what is a clear statutory obligation. At this point, 6 months have flowed under the bridge, and what we would like to know is when we can expect a publication of the rule. Do you have an answer?

Mr. TRIBBLE. If I may, let me give a little bit of background on this. As you well know, the proposed rules were published on June 30, 1980 and in response to that there were some 1,800 separate comments that came in, and many of those were objecting to the sampling and enforcement provisions of the proposed rules.

However, there was a large number of comments that quite properly raised questions as to the validity of the information and the decisions that had been made.

Now, we have during this interim examined very carefully the information we have received and, to make a long story short, we feel that we have altered the original proposal so greatly in response to the comments that we received that we think it would be appropriate to again publish what we might term the current position in detail, and ask for some additional comment on this.

One of the things that I would like to mention that is part of this problem is that the decision process itself involved the amalgamation of five separate computer programs, all of which had their own assumptions, of course. The information that we came up with was in many instances not very conclusive and in some cases contradictory.

Some of the problems that we have had, for example, with furnaces which use roughly 45 percent of the residential energy, the information we had indicated that standards would save only 0.47 quads in the 24-year period under consideration. That is only 3000th of 1 percent of the energy that would be used in the United States if we continued at a level demand of some 80 quads per year through the year 2005.

This is hard to understand, how the furnaces that would use this much of the energy in a residence, that standards would only save that small amount of energy in that long period of time. So, we have what we think is a legitimate question about the information that brought that fact to our attention.

Another thing that I think we need to look at in great detail is that we ran sensitivity analyses on these various conclusions from these computer programs and in the case of central air-conditioners—which is one of those items where the data we have indicates that it will save a substantial amount of energy—we found from the sensitivity analysis that the amount of energy saved due to standards, as predicted by the model, is very sensitive to certain assumptions placed into the model, such as "implicit discount rates." Therefore, one must look very carefully at the assumptions made.

In the water heaters, which is another category that is under consideration, we were led to believe that simply the addition of insulation would add 10 percent in efficiency to the water heaters. We cannot conceive of the fact that under the present circumstances with manufacturers certainly having some incentive to come up with better efficiency in their appliances, that they would not at least do some of this; so that this 10-percent improvement simply by virtue of adding information does not exactly seem to be reasonable to us.

As a matter of fact, just yesterday I found an arithmetic error in some of the data that we have.

All of us in DOE have had problems with this kind of information—the Policy Office has had, General Counsel has had, and we in Conservation and Renewable have had. We have been going through this trying to reconcile this.

Now, we have come together with the thought that we feel that we should now go forth to the public with our current position and re-evaluation in light of all the comments that we received and, as a matter of fact, ask for additional comments not only on our interpretation of all of this, but that we should ask some additional questions and have the public make some comment on that.

We are in a position, I believe, to do that in a relatively short period of time.

Mr. OTTINGER. Well, since these people have all looked at this question before, can that be done on an expedited basis? What is your timetable?

Mr. TRIBBLE. We have not set a firm date, but we have agreed upon the procedure to follow and the thing that we would need to do now. We have a draft of a Federal Register Notice which does include the preliminary cut on what we would have to put out. We need to go through that and refer it back to the documentation and be sure that we do come out with something that is in fact as reasonable a position as we can reach with all of the data that we have.

One of the things that is causing us this delay is that we realize whatever action we take is important. If we find a need for standards, it is important; if we found a need for no standards, it is important. We want to do the thing that is appropriate. Very honestly, the conflicts in the data and in the comments have given us a great deal of problem.

Mr. OTTINGER. Well, if extended delay continues you are going to face a law suit by NRDC—very likely which is already written—expressing its concerns with the intention to go to court; and it is my own disposition that I will join in that suit personally and perhaps have the subcommittee participate in that suit if the purpose is evasion.

Mr. TRIBBLE. The purpose is not evasion, sir.

Mr. OTTINGER. If there are genuine problems in setting the standards appropriately, I would hope that after all this time that they could be resolved expeditiously and we could receive a definite date on which the revised standards will be issued for publication and how long a period of time those are going to be out for comment—I think that could be a relatively short period of time—and then some specific assurance that there is going to be action, by a stated date. We have now finished the Conference on this and the Congress did not agree with the administration's assessment that this law should be repealed. So, the law will continue. Formal action has not been taken by Congress, but that should happen this Friday.

If you cannot give it to us now, I would hope that you could give us some very specific commitments before the end of the week.

Mr. **Tribble**. I would really need to talk with General Counsel and Policy. I think we should get our heads together and take a look at this. We are pretty much up to speed on this now, and can give you an answer later this week.

I would be most reluctant to fix a date because the hazards of that are that if we do miss it—for whatever reason—we still missed it just like we have the date on which we were supposed to report the first time.

I think that the reasons why that report did not come in on time are good ones. I certainly would assure you that we will actively work on it and you will not find us dragging our feet.

[The following response was received:]

> We have established a special task force within DOE to accelerate the completion of the revised proposed rule. This task force has been directed to complete a Notice of Proposed Rulemaking within 60 days. Under the new regulatory review procedures established by Executive Order, OMB will require another 60 days to review the proposal, prior to publication.

Mr. **Ottinger**. I assume this is a "Law and Order Administration" that believes in the law. The law is very specific. There may be extenuating circumstances why a violation of the law will result in lesser penalties, but from my standpoint when we pass a law, the Department's duty is to carry out that law in a reasonable manner.

I am perfectly willing to go along to the extent that there are real problems on conflicting data, trying to work out something sensible. It would be worse to issue inappropriate standards and discredit the whole process; that certainly is not my intent. Indeed, we have been known to do that in the past on occasion to our sorrow.

But there has got to be some kind of balance between achieving the best solution possible and interminable delay.

Now, is the Policy Office going to allow any kinds of standards to be issued, or are you going to continue to push for no standards for all those appliances, regardless of the objective results?

Mr. **Chiles**. Mr. Ottinger, I am assuming you are referring to a June 15 memo that we wrote laying out about six different policy options that are possible. [See excerpt on p. 20.] We have not picked one. Mr. Tribble has not picked one.

At the moment the situation is this, simply: All of us know that increasing efficiency of appliances is an excellent idea. The question is what methodology is required to allow that to happen.

As far as standards go, in looking at the data—and I should tell you my background is one of being an analyst—I have problems seeing that we have enough data to make the decision one way or the other, quite especially on the three appliances you have pointed out where the builders are one of the majority buyers.

To my mind, the jury is still out on that question. Until we get some definitive answers on whether or not those appliances will have efficiency improvements, with or without standards, I do not see which way to go on that decision.

So, at the moment I feel very much like Mr. Tribble does, that what we are facing here is a lack of data to make a definitive decision on how to accomplish the purpose that all of us want to accomplish, which is to improve the efficiency of appliances.

Mr. OTTINGER. In the memorandum which you issued on June 29, Mr. Chiles, you stated:

> It seems to me that with the possible exception of standards for central air-conditioners, the analysis done to date is sufficient to allow the Secretary to make policy decisions on appliance standards.

Have your views changed on that?

Mr. CHILES. I do not think my views have changed. I simply still believe that the case is still out on whether or not the fact that a major portion of those appliances are bought by builders leads one to want to know more about that particular kind of appliance, and whether or not standards are therefore needed because of the particular buying influences.

What I tried to say in that memo was that I think between what Mr. Tribble has presented to the Secretary and what my office has presented to the Secretary, the Secretary does have sufficient data to try to make a preliminary decision. I am not presupposing what the final decision will be because it has yet to be reached.

Mr. OTTINGER. In your memorandum you also recommended that the Secretary propose no standards for all product types. Is that consistent with your present open-minded opinion?

Mr. CHILES. Could you tell me what page you are reading from, sir? I would like to read that again myself.

Mr. OTTINGER. This is a memorandum of June 29 on the subject item CS528, nonconcurrence on proposed Federal Register Notice, summarizing the results of revised technical and economic analysis regarding minimum efficiency standards for eight consumer product types, to Joseph J. Tribble, Assistant Secretary for Conservation and Renewable Energy Resources, on page 4.

[The document referred to has been retained in subcommittee files.]

Mr. CHILES. If I may just read the paragraph which follows that, Mr. Ottinger, I think that explains my position even more fully.

The third paragraph then says:

> DOE should also affirm in this notice that although substantive standards do not appear justified, there are indications that the appliance market performs imperfectly in certain circumstances, particularly where intermediate buyers are involved. The notice should list and request comment on possible mitigating measures such as additional labeling requirements, voluntary industry standards or guidelines, changes in the minimum standards required if a dwelling is to qualify for federally backed mortgages, financing, government sponsored studies of key questions not answerable on the basis of currently available data.

And so forth.

So, I think what I am trying to say in this, Mr. Ottinger, is to agree with you that that portion of the market needs more data. However, in the interim in keeping with what your basic thrust was early on as to why have we not complied with the law, I feel strongly that we need to do something now which is correctible later when data will tell us what it should be.

Mr. OTTINGER. Well, I still have difficulty matching that with your conclusion that with the possible exception of air-conditioners the analysis done to date is sufficient to allow the Secretary to make policy decisions.

My concern quite clearly is, I understand we are asking the Administration to do something here that it has philosophical reservations about. There just is not a stronger marketplace person than I am. I believe that to the extent the marketplace can handle these problems that it should, and I believe that we ought to remove all the subsidies on all the energy products; and I proposed an energy budget that would do that.

I think exceptions have to be made where it is clear that the marketplace is nonfunctional. One of the places is with poor people where they get the right signals and cannot do anything about it.

Then, there are other places where you have peculiarities in the market that do not permit the marketplace to work. I think appliances is an area of tremendous potential that at least in some cases reflects that. Intervention is required because the people who buy the appliance are not the people who use it.

I also think there is a serious problem with respect to the state preemption, which I would like to get into in the future.

There is also another factor that I think is very important. My family was in the plywood business. My father often expressed enormous distress about the fact that the supply of wood was rapidly diminishing throughout the country, that there really ought to be massive reforestation on behalf of everybody in this business to assure our own future.

I said, "Why do you not do it then," and he said, "I cannot afford to do it unless everybody else is required to do it because it costs a considerable amount of money." His brother ran against Roosevelt for Governor of New York, he was a strong free enterprise type, but he said, "There simply have to be Federal standards here if we are going to get this essential job done."

I think the same thing is true here, that your appliance manufacturers cannot afford in those cases where more efficient appliances add costs, to do it unless there is a national standard and everybody is operating under the same rules.

You are in the Policy Office. Does that make sense to you?

Mr. CHILES. It makes a lot of sense. Let me just add also, there is another way of approaching the same target, and that is appliances labeling which we are foursquare for. I think appliances labeling gives the manufacturers a chance to compete on the market for a customer with one more piece of data to put into his analysis. I found that very useful myself. In fact, the last set of tires I bought, I bought on the basis of the new standards for tires. I think I got a heck of a good deal.

I think most buyers are very aware of things like that.

Mr. OTTINGER. Labeling does not solve some of these problems that we are talking about. It does not permit the manufacturer to produce a more expensive, more efficient appliance because his competitor can come in with a cheaper one. It does not at all resolve the problem of the purchaser who is not going to use the appliance and therefore could not care less how efficiently it runs.

Indeed, a GAO report indicates that their findings are that labeling is not going to be adequately effective.

Mr. CHILES. Well, I guess I have a little more faith in the American people having the intelligence to know what is good for them.

Mr. OTTINGER. If they are the purchasers, but not if they are not the purchasers. A November 1980 study by the National Association of Home Builders surveyed 82 respondents. They looked at first cost of appliances rather than energy efficiency in purchasing their appliances. Indeed, they have no incentive.

Mr. CHILES. Well, let me do the one thing a statistician should never do, and is to be a sample of one. I have just moved down here and bought a house in Fairfax. Believe me, I looked at every single appliance the man had in the houses. He had different ones in different houses and I chose on the basis of the ones I knew were the most efficient. I did not get that information from the Government, sir.

Mr. OTTINGER. You had a chance to choose the appliances, or you selected the house on the basis of the appliances?

Mr. CHILES. I selected the house on the basis of the appliances he had in it. He had some houses with one brand of gas furnace, one brand of oil furnace, and so on and so forth. I had a choice of 12 in the particular community I looked at.

I did not get that information from Government standards, I got that from Consumer Report.

Mr. OTTINGER. Well, those are my strong concerns from a policy standpoint. If the marketplace did in fact work, I would prefer that myself. But I think where there is a situation in which the consumer is unable to make the choice and the builder does, there is no real incentive for the builder to provide more efficient standards if it is more expensive. At the present time it is very hard, as you know, to build and sell anything because of the high interest rates. So, they are looking to first costs rather than life cycle costs. I think most purchasers do follow that.

Mr. CHILES. As I say, sir, in our opinion the data does not give you the clear choice either way on that. That is why we want the new NOPR to come out and get more data. We think the data is sufficient to go out with a new NOPR, but not to make the final decision—which is a key difference, I think.

Mr. OTTINGER. Have you seen the GAO report with respect to labels?

Mr. CHILES. No, sir, I have not.

Mr. OTTINGER. Let us get you that. The preliminary findings in their report—they are going to issue it later this year—concluded the labeling program may be ineffective for furnaces, central air-conditioning and other products purchased through contractors and builders. They state, "Overall, we are concerned about the effectiveness of a labeling program of furnaces, for example. Our concern is heightened by the fact that the same approach will be used for central air-conditioners. Our work to date would suggest the labeling program may only have potential in the showroom appliance area where people actually have an opportunity to purchase and compare."

[Pertinent excerpts of the GAO report follow:]

PRELIMINARY INFORMATION ON APPLIANCE ENERGY LABELING AND APPLIANCE EFFICIENCY STANDARDS (EMD-81-122)

In response to your letter of July 13, 1981, we are providing some preliminary information from the first phase of our review of the Department of Energy's (DOE) appliance efficiency standards program. You specifically asked us to address * * * the effectiveness of the related appliance energy labeling program operated by the Federal Trade Commission (FTC) and its implications for the appliance standards program, and

* * * * * * *

THE EFFECTIVENESS OF THE APPLIANCE ENERGY LABELING PROGRAM AND ITS IMPLICATIONS FOR APPLIANCE EFFICIENCY STANDARDS

Our preliminary impression of FTC's labeling program is that it may be having some positive effects on the sale of energy efficient appliances sold directly to the public in showroom settings but may be ineffective for furnaces and central air conditioners which are normally purchased through contractors

The showroom products (refrigerators, clothes washers, dishwashers, room air conditioners, and freezers) carry labels with operating cost information and permit the customer to compare a model with others of the same type and capacity. Our contacts with retail salesmen produced mixed views on the usefulness of the labels. We found that some salesmen were not very knowledgeable about the program, while in other cases, some retailers were promoting the labels and using them as selling points for their products.

With respect to the impact of the program on the energy efficiency of products made available for purchase, manufacturers may be responding to the labeling program by improving or eliminating the least efficient products. This is suggested by test results reported recently to FTC for annual revision of the labels.

In the furnace area, the energy labels contain reminders to save energy and suggest that the customer request comparative information from the dealer. Each dealer is required to have a set of comparative "fact sheets" available to show customers. Our initial information is that dealers do not consider the fact sheets useful and do not show them to customers. We found the fact sheets cumbersome and difficult to use.

It is unclear whether customers are assessing comparative efficiency information before buying furnaces. About half of the furnace purchases are made for new houses by builders and the rest are generally made through contractors who call on customers at their homes. Builders are required to keep labels on the equipment they install in new houses, and to have fact sheets available for prospective buyers to consult. We have not yet examined the extent that builders are providing comparative information to customers or customers are requesting such information from builders.

Overall, we are concerned about the effectiveness of the labeling program for furnaces. Our concern is heightened by the fact that the same approach will be used for central air conditioners for which a labeling rule is pending but not yet in effect. Since builders purchase abut half of the heating and central air conditioning equipment, the success of the labeling program in reaching home buyers and, in turn, influencing the choice of products purchased could be significantly minimized.

Given the early stages of our current effort, it is difficult to assess the effectiveness of the labeling program and, consequently, the implications the labeling program has for the appliance standards program. We have stated, in past report,[1] that establishing Federal standards would help to assure a level of uniformity in the appliance standards area (some States have already established their own standards) as well as to assure that only energy efficient appliances are manufactured. We also stated that the appliance labeling effort should continue in order to assure that consumers have available to them appropriate information when making purchase decisions. However, our work to date would suggest that a labeling program may only have potential in the "showroom" appliance area.

Mr. OTTINGER. Mr. Collins, we are glad to have you with us. I do not intend to monopolize the discussion. I want to recognize you for such time as you desire.

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[1] "U.S. General Accounting Office: Comments on the President's February 18, 1981, Budget Proposals and Additional Cost Saving Measures," OPP-81-2, March 3, 1981; and "Views on Energy Conservation and the Federal Government's Role," EMD-81-32, June 17, 1981.

Mr. COLLINS. Mr. Chairman, I do appreciate it because I welcome this opportunity that we have here in our committee to discuss this voluntary appliance or mandatory appliance approach. We certainly welcome you all to come here with us.

We have heard a great deal about this subject at home and, needless to say, in Congress for the past few years. We have been hearing a great deal about it. The manufacturers have been very sensitive to the area. I think very sensitive because they find price resistance when they increase the price of their product.

I might just say this, I can understand why they are disturbed. Energy costs have gone up since the enactment of this particular law. Oil prices have gone up 107 percent; gas prices up 105 percent; LPG up 52 percent. So, they are selling to people who have a much more expensive commodity that is making their product operate.

Now, I am very concerned about this because, as you know, we are importing $100 billion worth of OPEC oil. The OPEC oil is creating a problem for America. But the appliance manufacturers, as a result of it they are asking them to solve the problem. The problem is the fact that the cost of the fuel is too much. We should have never let ourselves get into the predicament of being dependent upon OPEC oil.

I must just say, the gentleman also talked about a subject that concerns me a great deal. We have had a liberal Congress around here for about 25 years, and as a result of it their high spending has brought on high interest rates. As our chairman said, high interest rates are probably from the economic viewpoint the most serious problem we have in the country.

That is due to the fact anybody that had second-grade economics understands, you cannot let your national debt go up $91 billion as it has during the past year without causing interest rates to be 20 percent.

The appliance manufacturers are really suffering because these people when they buy an appliance keep saying they want to get a good price.

I could not help but think as the chairman was talking about how we want to have everything that we could to provide good extra energy facilities savings. We want to provide these savings. I thought about my son-in-law who was telling me the other day what the price of a Mercedes is today—it is over $30,000. But I want to tell you, that thing gets good gas mileage.

Now, you just wonder how many people can afford a Mercedes. With our automobile manufacturers hurting in this country I hope they are not buying one anyhow, but basically, if we put all these standards in—and I very strongly advocate that we defer putting them in—only the rich can afford to buy an appliance. There are some of us in Congress that are very concerned about what the poor people and the middle class can afford to buy.

They talk about the manufacturers. I would like to get in the record, we have a survey from the May 1981 Professional Builders. They went to these residential builders, they went out and talked to them. They said in the past 2 years, "How do you increase the energy efficiency of the mechanical equipment in the homes you build?" Seventy-six percent of them have more efficient equipment in the past 2 years. They very much are putting it in.

They asked them this, they said, "When you get ready to sell a house how important, in your home sales volume, are the following in saving energy in homes?" In other words, do the customers really, when they go to buy a home, do they ask you about these energy savings, just like you did. I think people are smarter than Congressmen sometimes think they are. I think the average person is pretty smart.

They said on efficient heating and all this type of equipment, air-conditioning equipment, 47 percent said it is very, very important; 42 percent said it is somewhat important; only 10 percent said it had little importance. In other words, 90 percent of the people buying are very, very conscious.

So, if you are selling homes out here and you have side by side the guy that has the equipment that gets the job done, he is going to be the one who gets the sale.

Let me ask you this, how far can we defer these standards? In other words, what options do you all have because we had some figures showing about how much has already been accomplished.

I thought if we just leave it voluntary, leave it alone and not get the Government entirely in this thing, we are going to get it solved. I had figures that show that since 1972 the appliance industry voluntarily has made significant gains to this extent. In refrigerators, they have improved them 89 percent; that is tremendous. In freezers, 96 percent; in clothes washers, 52 percent. They did that voluntarily because it is good marketing, it makes a better product, makes a more salable product and the customers want it.

Every time I see the Government get into anything—yesterday we plagued the Nation, we voted in we are going to create a new Tourist Agency for America. Tourism, the third agency in America. Yet, we are going to start now letting the Federal Government tell them how to run the tourist business.

I have never seen any industry in any way—and we have had 200 years of this Republic—not a single time has the Government intervention ever helped the industry out. And it certainly does not help the American public out.

Let me just get back to one question because I want to tell you, there are those of us, there are two sides to this subject up here about putting everybody in a Mercedes Benz, or putting everyone into a Rolls Royce, on heating, appliances, and air-conditioning.

To what extent are you given discretion to defer this appliance standard?

Mr. CHILES. I would defer to Mr. Tribble.

Mr. TRIBBLE. Let me answer that. As I understand it, we are under a mandate to come forth with a determination. Whether there will be standards or a finding for no standards is the problem that we do face. But it is my understanding that we must do this and as a matter of fact, we are past due. We are working actively on it.

Mr. COLLINS. You are to make a report telling us whether we should have very, very stringent standards, or whether we should rely on manufacturers to continue this most successful program they have had of improving standards?

Mr. TRIBBLE. As I understand our mandate, we must either make a determination that standards are not technologically feasible and economically justified, or we must find that some standards are, and we must report this back. This is my understanding, that we must do one or the other.

Mr. Collins. You mean by the end of this year?

Mr. Tribble. We are past due, I am afraid.

Mr. Collins. You are now?

Mr. Tribble. We were supposed to have done this.

Mr. Collins. What the chairman is reminding you of.

Mr. Tribble. That is correct.

Mr. Ottinger. If the gentleman will yield. If they can justify it on a technological and economic basis they can make a finding of no standards.

I am then going to pursue the question of whether that ought to preempt States from issuing their own standards which very much concerns me. But that is another question.

But they can make a finding, and one of the options that was listed in the policy office memorandum is that they can make a finding that there should be no standards. They have to have that justified on the basis of data or somebody is going to take them to court and say, "Your data does not justify the finding that you have made."

So, the way we have set this up, we do not mandate them to have standards. We only mandate them to have standards unless the data clearly justifies "no standards" on a technical or an economic basis.

Mr. Collins. I appreciate the way the chairman summed it up very well. I hope you do give us an opportunity again by finding on behalf of the poor people of this country and the middle class, and forget the Mercedes Benz crowd that is going to own all those "gizmos" on these appliances because today with the high cost of interest of paying on an appliance, and with inflation which already makes it very, very expensive to buy it, remember that people need to buy the appliance. We just cannot put all these little features in which do this or do that. The real cost is not in the cost of the appliance, the real cost problem has been the cost of the energy that we use to create it.

Thank you, Mr. Chairman.

Mr. Ottinger. I would like to point out to my friend from Texas, we find ourselves voting together more and more frequently these days, even though we come at it from somewhat different approaches.

We had testimony last week from a home builder with respect to insulation of homes. They referred to a project of very inefficient homes that were built that could not be sold because they turned out to be more expensive than other homes that were available. I think that is a real problem.

With respect to the purchase of a Mercedes or Cadillac, requiring everybody to do that, I do not think that is the case. But a cost-benefit analysis is required as a part of this effort. You have to show that it is in fact economically justified.

I think you have to look at that over a life-cycle basis and not just the first cost basis. It may cost 10 percent more to purchase an efficient appliance, but the fuel savings you get may save the homeowner 10 percent a year from then on out. Sometimes that is true in the purchase of a car too, of course.

I think those are considerations that are going to have to be made in the issuance of this.

What is your evidence with respect to the increased costs of appliances due to efficiency improvements? Is that in fact a substantial first cost penalty?

Mr. **Tribble**. You mentioned central air-conditioners, and the information that I have here is that the first cost in 1980 dollars is the base line. I believe that is without standards. The cost would be $1,115. The proposed standard would be $1,481, which would be a difference of some $366, which would then be on the order of about a 30-percent increase in cost.

Mr. **Ottinger**. And what are the estimates of the savings over the life of the appliance?

Mr. **Tribble**. I am sorry, I do not believe we have that information. I do not have it readily available here.

Mr. **Ottinger**. If you can furnish that for the record.

Mr. **Tribble**. All right.

[The following information was received:]

CHANGES IN LIFE-CYCLE COSTS OF CENTRAL AIR CONDITIONERS

[1980 dollars]

Class	Increase in first cost	Savings in operating cost	Change in life-cycle costs [1]
Split system	366	576	210
39.000 Btu/hours	325	784	459
Single package	300	569	260
39.000 Btu/hours	330	876	546

[1] Change in life-cycle costs = (savings in operating cost)-(increase in first cost). A 10-percent discount rate was used in calculating net benefit.

Mr. **Ottinger**. The findings of the Department originally were that the standards for these nine appliances would save the country between 2.3 and 2.4 billion barrels of oil through the year 2005. Can you tell us if those findings are still accurate? You said you were having some problem with the data. If so, if they are not still adequate, what causes those changes and what is the current estimate of the Department?

Mr. **Tribble**. The current information that we have is that if standards were issued for all of the products under consideration, the savings would be 0.46 quads per year.

Mr. **Collins**. Mr. Chairman, will the gentleman yield?

Mr. **Ottinger**. Of course.

Mr. **Collins**. In making your survey, would you take in the calculated compounded cost of interest, assuming it to be around 22 percent which is about what it would cost the average person? When you figure those cost evaluations, be sure you add in the costs because there are very few people in this country that can buy it for cash, they are having to pay terms.

Mr. **Ottinger**. Mr. Reagan says he is going to bring interest rates down to single-digit levels.

You mean you do not believe him?

Mr. **Collins**. He would if he had a Republican House.

Mr. **Ottinger**. He has a Republican House.

You will see it again today, I am afraid. He has not been turned down on anything yet.

We had best recess, I am sorry to have to do that, it is an imposition on you. I will go vote and return as quickly as I can.

[Brief recess.]

Mr. **Ottinger**. I apologize for the delay. We ought to be all right for several hours at this point.

On March 4, Secretary Edwards responded to a letter that I had sent him in February saying:

> Frankly, on the basis of what we have been advised to date it is quite likely that in many if not all cases standards could not be defended on the record so far presented.

Is that an accurate assessment at this time?

Mr. **Tribble**. Would you please repeat that?

Mr. **Ottinger**. He said, "Frankly, on the basis of what we have been advised to date"—that is on March 4—"it is quite likely that in many if not all the cases standards could not be defended on the record so far presented."

Mr. **Tribble**. I think that statement is good in the sense that we do have serious questions. This is the thing that we do in fact want to resolve.

Mr. **Ottinger**. Well, then how do you reconcile that with the memorandum that you made, the June 12 action memorandum which was drafted by your office, saying that, in early February the Secretary met with representatives of the General Counsel and Conservation Office and discussed the determination of no standards for all products, at which time:

> They advised you that due to a preponderance of data in support of standards for at least some products a DOE finding of no standards would be difficult to defend.

[The memorandum referred to may be found in subcommittee files.]

Mr. **Tribble**. Well, that is right, and these are some of these things that I mentioned earlier, that on those things where the proponderance of data does indicate that under the guidelines we have standards would be called for, there are some factors in that data that are quite problematical to us. The conclusion we have now as I understand it, is that the data that we have now, taken as they are, would justify some standards.

On the other hand, we have serious questions about that data. Now, if going back and getting additional information does not alter the current status of the data, in other words, if we can confirm what we think the data now says, if we find in the final analysis that that is right, then it appears that there would be some standards justified.

Mr. **Ottinger**. Is this data available to the public?

Mr. **Tribble**. We would intend to make it available to the public when we go out with this proposal for additional information.

Mr. **Ottinger**. The background information will be available so that private groups can assess it?

Mr. **Tribble**. That is right.

Mr. **Ottinger**. I think that is very important.

The remaining four categories on which the deadline is November of this year, are you going to be able to meet that deadline?

Mr. Tribble. I am told that we have stopped work on that. So, apparently we would not meet that deadline.

Mr. Ottinger. Would you give me dates, then, on which you think you can issue a proposed rule on those four categories?

[The following response was received:]

> The President's budget request did not include any funds to support issuance of appliance standards for the remaining three categories. Congress has not yet completed action on this budget request. We threfore are unable to provide a schedule for issuance of proposed regulations at this time.

Mr. Ottinger. I really think we do have to set a schedule here because one of the things which really bothers me, Mr. Chiles, in your June 15, memo is one of the options that you listed—I think it was No. 4:

> Delaying regulatory action. Assuming the Congress appropriates no funds for the program argues this amounts to direction from the Congress not to proceed with the development and implementation of standards.

I think that is not a viable option. Do you think it is a viable option?

Mr. Chiles. I did not mean for it to either be or not to be, I was simply stating what the options were. That is why there are six.

Mr. Ottinger. I would like to indicate that we would take serious offense to pursue the fourth option. That is really our concern that that may be the case. There is a statutory requirement. If that statutory requirement is in fact ignored, I want to put you on notice today there will be a law suit—either from outside or inside the Congress—to see that it is met.

Mr. Chiles. I have noted that on my copy.

[The summary and policy options of the memorandum referred to follow. The complete memorandum has been retained in subcommittee files.]

Department of Energy Memorandum, June 15, 1981

Summary: Mr. Joseph J. Tribble, Assistant Secretary for Conservation and Renewable Energy (CE), will shortly circulate for mandatory concurrence a package proposing the imposition of Federal energy efficiency standards for three classes of appliances—furnaces, water heaters, and central air conditioners. The package will propose "no standards" for five other product classes defined by statute (kitchen ranges and ovens; clothes dryers; refrigerators and refrigerator/freezers; and room air conditioners). Based on our preliminary analysis of the Notice, it is likely the PPA will have to nonconcur and request modifications. Before we discuss specific changes to CE's packages, we need to resolve the basic policy issues surrounding appliance standards. This memorandum outlines the six alternative courses of action available to us and provides an assessment of the pro's and con's of each apppoach.

Policy Options: Although PPA staff have lot completed their peview of CE's revised analysis, our preliminary assessment provides sufficient information to allow us to conclude that: (1) prior to forwarding the Notice proposed by CE to the Secretary and OMB, PPA would require that the document be substantially revised; and, (2) before considerable staff efforts is devoted to such a task, at least a tentative policy call can and should be made on how the Department should proceed, based on our preliminary review of CE's package and earlier analyses.

There are six policy options:

(1) Accept the basic elements of CE's position; support substantive standards for furnaces, water heaters, and central air conditioners.

(2) Reject CE's analysis and conclusions as unpersuasive; if necessary, commission further analysis which may support "no standard" standards for all categories.

(3) Accepts CE's energy savings estimates and cost/benefit analysis; but conclude that the energy savings are not sufficiently large to warrant substantive standards for the three categories.

(4) Delay regulatory action, and assuming that the Congress appropriates no funds for the program, argue that this amounts to direction from the Congress not to proceed with development and implementation of standards.

(5) Reject even "no standard" standards in principle; seek repeal, if necessary, of the statutory mandate for standards.

(6) Promote a compromise based upon issuing sustantive standards for the three categories to become effective in 1986 (i.e., no interim standards in 1982) and an interim program emphasizing labeling and monitoring of responses by intermediate buyers and consumers. If the market can be shown to be responding, the standards could be eased or eliminated prior to becoming binding in 1986.

Mr. Ottinger. Why was the work stopped on these remaining ones?

Mr. Tribble. I am going to refer that to Maxine. I am sorry, I am not familiar with that part of it.

Ms. Savitz. We put all our emphasis on re-doing the analysis for the eight products that were due in January and then, at the budget request, the rescissions removed some of the money, there were no funds.

Mr. Ottinger. So, this was a determination made basically by whom, by the Secretary or by OMB?

Ms. Savitz. I really do not know.

Mr. Ottinger. The rescissions.

Ms. Savitz. The rescissions were made jointly, they were joint decisions within the administration.

Mr. Ottinger. I had asked OMB to appear here with us today because they eventually will have to review these decisions. Has OMB expressed itself with respect to pursuing the statutory requirements?

Mr. Tribble. I have had no expression from OMB.

Mr. Ottinger. Mr. Chiles?

Mr. Chiles. I have had none, either.

Mr. Ottinger. That is what they said. They said it was a Cabinet recommendation that the standards would be repealed. They had not been involved in this process. We have some indications that there may have been expressions of interest. At any rate, they are going to have to review it.

DOE has indicated some intent to have an outside review made of the analysis that forms the basis for appliance sufficiency standards. What is the current status of that procurement?

Mr. Tribble. The contractor has not been finally selected. We still do intend to go ahead with that, but there is still some question in our mind as to whether or not this should be done concurrently with putting this back out for the public review, or whether it should be done subsequent to that. So, that decision has not been made

Mr. Ottinger. Would you intend to hold up the issuance of standards?

Mr. Tribble. No. We feel that will not delay it because we think that review can take place at the latest during the time that we are reviewing the public comments that we get from this publication.

Mr. Ottinger. You say there has not been a selection of a contractor at this point?

Mr. Tribble. Not a final selection, that is right.

Mr. Ottinger. Is the selection being done on a competitive basis?

Mr. Tribble. I do not believe so.

Ms. Savitz. It would be a contractor who has not been previously involved with the standards program or is not involved in the industry itself, so he comes as a neutral person to look at the data.

Mr. Ottinger. So, you are going sole source on this, as I understand, with the MITRE Corp.

The funding contemplated for this contract, I understand, is $150,000?

Mr. Tribble. That is right.

Mr. Ottinger. I wonder if that is really justified in view of the very limited program funds we have. You are going to get comments from all the people directly involved, and they all have experts involved in this thing, and you have people that have been involved in this thing for some time.

Is it necessary to take $150,000 and go out to a private contractor?

Mr. Tribble. I think that is a real good question. However, we do want to be sure that we look at this from an impartial point of view and that we do accurately reflect what the data shows. We feel that of course most of the people who will make comments will have a bias in one direction or another. We think this perhaps is out of an abundance of caution.

Mr. Ottinger. What instructions are being given to the contractor? Do you have a proposal out to the contractor?

Ms. Savitz. We have a proposed work statement that we put together.

Mr. Ottinger. Can you furnish that to us?

Mr. Tribble. Yes.

Ms. Savitz. Yes.

Mr. Ottinger. We would like to see it. That describes what they are to examine?

Mr. Tribble. That is right.

Mr. Ottinger. What is the timing contemplated in the contract? I take it from what you said that has not been determined yet?

Mr. Tribble. That is right. The number that has been bandied about is, I think, 90 days. Whether or not that is necessary and when that would begin has not been determined.

Mr. Ottinger. Now, as I understand it, there is under review a change in the definition of what constitutes a "significant conservation of energy" with respect to the standards. The statute requires that you issue these standards if there is a "significant conservation of energy." There is a feeling in the Policy Office that that was defined too low.

What are your conclusions on that at the present time?

Mr. Tribble. This is one of the questions that we think we should request additional commment on. We understand there is not any statutory definition of significant savings. I think, yes, I would personally view the 0.06 clause as being a very low number. But be that as it may, we think we should get additional information on it.

Mr. Ottinger. Have you made an alternative proposal, or has the Policy Office?

Mr. Tribble. We have not.

Mr. CHILES. No.

Mr. OTTINGER. Do you have any studies or analyses that indicate what an appropriate level would be, on a cost-benefit basis?

Mr. TRIBBLE. No. We have talked about this as it might relate to the definition of significant and we have not found any guidance on that. The only thing that we have thought of are some of the definitions of the words as they came forth in the Fuel Use Act. There was quite a dissertation in that act on the definition of the term significant. But of course, that has no direct bearing on this.

Mr. OTTINGER. Well, what is SAI?

Ms. SAVITZ. Scientific Applications, Inc. is a contractor who has given support.

Mr. OTTINGER. It is a contractor with DOE that has been evaluating these standards?

Ms. SAVITZ. No, it has not been evaluating the standards, it has given us some support-services type of help as we have gotten the data together.

Mr. OTTINGER. I see. I understand there was a June 30 report from SAI in response to the Policy Office's recommendation of nonconcurrence; does that sound right?

Mr. TRIBBLE. I am not aware of one.

Mr. OTTINGER. I am told that is where this comes from. It says, PPA requests that the section which discusses the meaning of "significant energy savings" in the analysis here appear at the beginning of the analysis rather than the end.

PPA also questions in the body of the memo the justifiability of seeking a definition of "significant energy savings." PPA agrees that perhaps the definition of "significant energy savings" should be placed in a highlighted position. PPA contends that there does not appear to be statutory guidance for this definition. In fact, the definition "significant energy savings" was derived from section 325(a) of EPCA.

This guidance stems from congressional criteria established for the definition of category 14 product which is not listed by Congress in the 13-product categories. The criteria are as follows: (a) average per household use 150 kWh, or its Btu equivalent for any 12 month calendar period; (b) household energy use exceeded 4,200,000,000 kWh or its Btu equivalent for any such 12-month calendar period; (c) substantial improvement in the energy efficiency of products of such type or class is technologically feasible.

Is there a difference between (c) in the Policy Office with respect to the importance of "significant energy savings" or a determination of what it ought to be in this country?

Mr. TRIBBLE. I do not believe so.

Mr. CHILES. No, sir. I think the point that we are trying to make is that we thought it would read better if that was in the front of the document rather than at the end because people would understand where you are coming from early on.

Mr. OTTINGER. That does not sound very exciting.

But the level at which it is set, what is worth pursuing in terms of standards is very important. They are going to determine that in the course of your comment period. Is that something that MITRE is also going to be asked to comment on?

Mr. **Tribble.** No, I would not anticipate that we would ask them that kind of a question. We are looking to them more for an analysis of the data that we have, to be sure that we are doing the proper analysis, are reaching the proper conclusions. We would not expect them to comment on policy questions.

Mr. **Ottinger.** Is it going to be determined on an objective or subjective basis?

Mr. **Tribble.** I guess we have not gone into that that deeply. We would certainly hope it would be objective.

Mr. **Ottinger.** You would anticipate that you would be doing, in the relatively near future, some analysis of at what level of energy savings the costs justify pursuing standards.

Mr. **Tribble.** right.

Mr. **Ottinger.** How was the quad level of significant energy savings determined?

Mr. **Tribble.** I hate to tell you, but I ran through some arithmetic on that, and I found that that arithmetic is not accurate. It is supposed to represent the output at 65-percent capacity of a 1,000 megawatt powerplant. But my calculations—and I had them checked by others—indicated that number was not accurate. That was in fact the derivation of it. The .06 quad level of significant energy savings was determined from the requirements defined in the legislation for adding any category 14 products to the list of products considered for standards. The thought process was that if .06 quads should be the level needed to add products for consideration, then .06 quads should be a good criteria for the 13 mandated products.

Mr. **Ottinger.** Is that a sound basis if the arithmetic is not right?

Mr. **Tribble.** I think that is strictly, pulled out of the air.

Mr. **Ottinger.** Do you at this juncture have a formula that you think does make sense?

Mr. **Tribble.** No, sir, we do not. That is one of the things that we need to give consideration to internally and also ask for comment on.

Mr. **Ottinger.** I do think in making these calculations that the national benefit ought to at least be considered. If you just take the current price of oil this year for the standard, you are not beginning to get the actual overall cost to the country. Whereas some of the national security problems are not measurable, some of the other economic effects of the necessity of reliance on that purchase are measurable. I think it ought to be considered.

On the question of the market ability to be able to handle these problems, has DOE done any studies to determine the proportion of sales of each of the product classes to ultimate consumers and those to intermediaries such as building contractors and landlords?

Mr. **Tribble.** I am not aware of any of that kind of study.

Mr. **Ottinger.** Perhaps you can get it in some of the questions that you are going to seek comment on. It would be very important to establish the degree to which the ultimate consumer is not in fact the purchaser of the appliance. It seems to me that would be very relevant to the ability to operate effectively through a labeling program. To the extent that that information can be obtained without undue delay, I think it would be very useful.

Mr. TRIBBLE. That is the percentage of appliances that are purchased by the builders?

Mr. OTTINGER. Different appliances that are purchased by builders or landlords, rather than consumers.

I referred before to a very interesting survey that was made by the National Association of Home Builders, regarding how they purchase appliances. The indication was that 85 percent of them look just at first cost.

I do not know if there is an analysis or whether it is worth either the time or the money to pursue it, but I think it would be worthwhile looking into information on consumer habits with respect to buying appliances and buying homes, the degree to which appliances really do make a difference in their determination. Again, to find out if labeling will be effective.

Are you aware of any such studies at the present time?

Mr. TRIBBLE. We have had some reports from various organizations. I am not famliar enough with them to quote them, but I do know that we do have some information along this line. But here again, this quite possibly should be something that we should ask for.

Mr. OTTINGER. It is of concern to me. My gut reaction tells me that a person buys a home because of the lot and the location, and whether the house looks nice. He is not as fine an energy purchaser as Mr. Chiles says that he was. He ignored all these other things and just looked at how efficient their appliances were.

I think to the extent to which we can get some evidence on that, it would be useful.

When you talk about a labeling program, is there presently a labeling program in effect?

Mr. TRIBBLE. Yes, the Federal Trade Commission's program.

Mr. OTTINGER. The Federal Trade Commission does have a labeling program in effect.

Mr. TRIBBLE. Yes.

Mr. OTTINGER. What information does that label require?

Mr. TRIBBLE. The label gives the range of the efficiency of the appliance and then gives the efficiency of the appliance to which this label is attached, for room air-conditioners.

Mr. OTTINGER. Are these label requirements different for each product, or do they apply to all the appliances that we have listed in the statute?

Ms. SAVITZ. The water heaters do have a label. Central air and furnaces have a generic type of label as opposed to one comparing the costs. There are a couple of appliances where labeling would not make a difference; e.g., those are dryers, kitchen ranges and ovens, and these are all for these products.

Mr. OTTINGER. The staff has given me a furnace label that does not have any specific data on the cost of this, a comparison of cost with any other kind of appliance, as a matter of fact, except steering you to have some concern about energy. They are virtually useless.

It says:

> Energy guide. You will save substantially on home heating and cooling energy costs by following the simple steps outlined below. Weather prove your house; assure energy-efficient heating and cooling equipment installation. Operate and

maintain your system to conserve energy. Help conserve energy. Compare the energy efficiency rating and cost information for this model with others. Check the figures and spend less money on energy. Your contractor has the energy fact sheets, ask for them.

Mr. TRIBBLE. That is one of the least valuable ones. I have here one on refrigerator-freezers which, on the other hand says, "The capacity is 23 cubic feet. The type of defrost, full automatic." It mentions model numbers, and it shows the model with the lowest energy cost as $68 estimated yearly energy cost. The model with the highest energy cost of $132, and this particular model at $91.

Mr. OTTINGER. That is the kind of information that I do think would be useful.

Mr. TRIBBLE. This is applicable to the majority of the categories that are mentioned in the statute.

Mr. OTTINGER. These labels are based on present average energy prices?

Mr. TRIBBLE. I would think not. I do not know how often they are updated.

Ms. SAVITZ. The EIA data is published regularly.

Mr. TRIBBLE. Do we know how often it is updated, I mean how often the numbers are changed?

Ms. SAVITZ. Annually.

Mr. OTTINGER. Are they done for the Nation as a whole, or are they done by region?

Mr. TRIBBLE. Nationwide.

Mr. OTTINGER. That is the problem, it seems to me.

Mr. TRIBBLE. It says further that your cost will vary, depending on your local energy rate and how you use the product. It also has a table here that shows the cost per kilowatt hour and the estimated yearly cost shown.

So, while this obviously was based on somewhere between 4 and 6 cents a kilowatt hour, anyone could use this same label and look at their particular cost per kilowatt hour and come up with the range and the position for this appliance on the range.

Mr. OTTINGER. Does DOE have any sales-weighted data, do they have any idea what the actual purchases are in relationship to efficiency?

Mr. TRIBBLE. Yes, we do. We have some for 1972 and 1978, and we have a projected number for 1980.

Mr. OTTINGER. Would you furnish that information for the record?

Mr. TRIBBLE. Sure.

[The information follows:]

ACTUAL AND PROJECTED SHIPMENT WEIGHTED ENERGY FACTORS [1]

Product type/fuel	1972	1975	1978	1980 [2]	1985 [2]
Furnace, boiler/gas		62.7	63.6	65.9	72.1
Furnace, boiler/oil		73.6	75.2	76.0	77.6
Room air conditioners	6.22		6.75	6.97	7.24
Central air conditioners	6.66		6.99	7.41	8.44
Water heater/electric	79.8		80.7	81.3	(3)
Water heater/gas	47.4		48.2	51.2	(3)
Refrigerator and refrigerator freezer	4.22		5.09	5.67	6.26
Freezer	8.08		10.1	10.7	11.7

[1] Based upon manufacturers aggregated data from DOE CS 179 industry wide survey.
[2] Projected.
[3] Manufacturers did not provide an estimate for the efficiency of water heater in 1985.

Mr. OTTINGER. We have been joined by our distinguished ranking Minority Member, my good friend, Mr. Moorhead from California.

Mr. Moorhead, would you like to ask some questions?

Mr. MOORHEAD. Yes.

I would first ask unanimous consent that my remarks that have been prepared be placed in the record. You may already have a copy of them.

Mr. OTTINGER. I have not seen them. We will be delighted to have them in the record.

Mr. MOORHEAD. I also have a Builder Market Survey which I also would like to have placed in the record. It has some very interesting comments.

[The prepared statement of Mr. Moorhead and the Builder Market Survey follow:]

REMARKS OF THE HONORABLE CARLOS J. MOORHEAD
Before the Subcommittee on Energy Conservation and Power
July 29, 1981

Appliance Efficiency Standards

I want to welcome the Assistant Secretary, Mr. Tribble, and Mr. Chiles here today. We will very much appreciate having the opportunity to receive your testimony.

Mr. Chairman, mandatory appliance efficiency standards are a clear example of some of the most unneeded and counter productive energy regulations that confront manufacturers and consumers today. Such a regulatory scheme completely ignores unmistakable marketplace forces and the self interest of manufacturers to respond to those forces. Since the National Energy Conservation Policy Act provisions on mandatory standards were enacted, oil prices have risen 170%, natural gas prices have risen 105%, and LPG prices have risen 160%. The people have responded by conserving significant amounts of energy and demanding energy efficient appliances. Since 1972, the appliance industry has been voluntarily making concrete gains in energy efficiency as a result of marketplace forces. I fully expect continued gains. Artificially contrived Federal standards based upon sometimes inaccurate test procedures are not the solution.

The Carter Administration spent $7 million in consultant fees alone to come up with Federal standards so unworkable that they precipitated over 2,000 adverse comments. The proposed standards would have reduced the workability of the appliances, escalated prices, and forced certain lower priced appliances off the market. The latter situation will adversely affect middle and low income consumers causing such individuals to go without or hang on to older less efficient products. I don't think we can have this cavalier let-them-eat-cake attitude towards lower and middle income America.

The Carter Administration's own Council on Wage and Price Stability said: the standards will result in excessively expensive appliances; the standards are anti-competitive and anti-small business.

The Carter Department of Justice indicated that the standards are economically unjustified and anti-competitive enough to threaten the survival of a significant number of small firms in markets for covered products.

It is clear to me that mandatory Federal appliance efficiency standards are not a salvagable item. Section 325 of EPCA, as amended, empowers the Secretary of Energy to determine by rule that the mandatory standards shall not be promulgated if the standards will not result in significant conservation or if the standards are not technologically feasible or economically justified. I strongly believe that the preponderance of the evidence suggests that the Secretary should invoke Section 325 authority to issue no standards. I know the Administration is seriously attempting regulatory reform. This is an area ripe for reform.

BUILDER MARKET
SURVEY (1981)

ENERGY EFFICIENT HEATING
VENTILATING AND AIR CONDITIONING (HVAC) EQUIPMENT

In May 1981 the magazine, Professional Builder, which has a circulation of 70,000 residential builders, sent a random survey to 500 builders (receiving 100 replies). Following are the relevant questions and answers:

1. What type of HVAC equipment do you now include as standard?

Equipment	Percentage of Response
Forced air	70.8%
Hydronic	2.2%
Heat pump	37.1%
Solar assisted	5.6%
Other	11.2%

2. In the past two years, how have you increased the energy efficiency of the mechanical equipment in the homes you build?

More efficient HVAC equipment	76.4%
Upgraded energy efficient appliances	46.1%
Design in more passive solar features	22.5%
Active Solar	6.7%
None	13.5%
Other	4.5%

3. How important to your home sales volume are the following in saving energy in homes?

Efficient HVAC equipment	
Very important	47.1%
Somewhat important	42.5%
Of Little importance	10.3%

Efficient Appliances	
Very important	25.0%
Somewhat important	52.4%
Of little importance	22.6%

4. In your opinion, how important is energy efficiency in the purchase decisions of your buyers?

A vital consideration could swing the sale	27.3%
Very important, increasing in importance	34.1%
Somehwat important, they ask about it	35.2%
Not important, neutral	6.8%

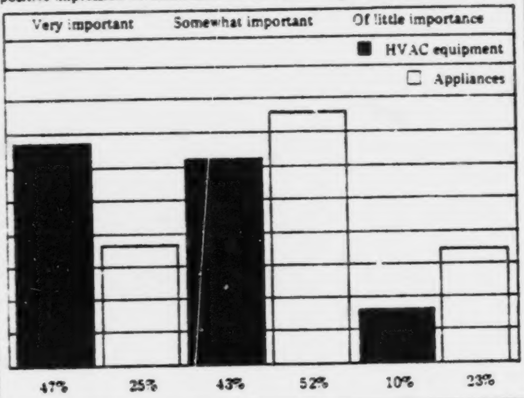
In past two years, builders have increased energy efficiency of mechanical equipment

In response to buyer demand for energy savings, over three-quarters of builders nationwide are using more energy-efficient equipment in the homes they build. And almost half upgraded the energy efficiency of the appliances they include. This trend was even stronger among large-volume builders.

More efficient HVAC equipment	76.4%
Upgraded energy-efficient appliances	46.1
Designed-in more passive solar features	22.5
Active solar	6.7
Other	4.5
None	13.6

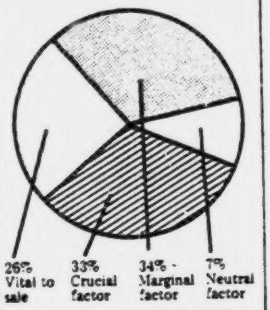
About half of builders consider efficient HVAC equipment as very important to their home sales

As a marketable feature, energy-saving equipment is considered important to home sales. Efficient HVAC systems were rated very important by about half of builder respondents and somewhat important by another 42 percent. Regionally, two-thirds of builders in the South consider energy-efficient HVAC equipment as a very important feature in their home sales. Efficient appliances also provide a positive impression on home sales volume, according to builders nationally.



Energy efficiency important in home purchase decision

More than 60 percent of builders surveyed say that energy efficiency is very important or a vital consideration in a buyer's decision to buy a home.



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PROFESSIONAL BUILDER OCTOBER, 1981

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Mr. Moorhead. I want to congratulate the work that has been done on the testing and labeling of appliances because it gives the American people information that they need in determining how to buy the most energy-efficient equipment that they can afford.

But not everybody can afford always the most energy-efficient item and in this country we always have a right to buy that which we can afford.

In this survey it noted that 76.4 percent of the homes in America have increased energy efficiency in their new homes, and that 46 percent have upgraded the efficiency of the applicances in their homes. That is on a voluntary basis because people are concerned about energy efficiency and that becomes sometimes the most important item in buying or selling an item.

That is one advantage of your testing, it tells them what they can trust and what they cannot. Having a label gives them that information. But we do not dictate to them and tell them what they have to buy or what they have to do because sometimes they would not get a new home, or they would not get a new appliance if they had to buy something that was very, very expensive and that they could not afford.

Mr. Tribble, you have mentioned the adverse comments received by your office on the proposed standards, many from other Government agencies.

I presume many of these comments dealt with the justificaton for these standards under section 325 of the legislation. If you should decide that these standards are not technically feasible, economically justified, or will not result in a significant energy savings, do you not have authority under section 325 to decide that no standards will be issued?

Mr. Tribble. Yes, we do.

Mr. Moorhead. When you consider economic justifications, will you consider the capital costs of the industry, Justice Department advice on competition, and the loss of jobs as a result of small firms going out of business?

Mr. Tribble. Yes, we will. Those are factors that will be considered.

Mr. Moorhead. Is the DOE having any technical difficulties in developing test procedures?

Mr. Tribble. I am not aware of them for the types of appliances that we are considering. Most of the appliances we do now have tests on. They are being used by the Federal Trade Commission in the establishment of the information that goes on the labels.

I am not aware of any areas where we do not have a test procedure on any of those.

Mr. Moorhead. I guess one of the problems you have is the same as the automobile manufacturers have on estimating gasoline mileage that you get. They all overestimate or use the most advantageous situations. Sometimes they become very misleading. I am sure they do on automobiles and most people get disappointed.

Is it true that some low- to middle-income consumers could possibly save energy by purchasing lower cost, affordable, less-efficient appliances like air-conditioners and use the item less, thereby offsetting the lower efficiency?

Mr. **Tribble**. This is one of the things that we hve considered, and we are looking at this on a national basis. But we do of course recognize that in the cold climates an air-conditioner would be used a great deal less than if it were in a warm climate.

One of the factors that we will certainly want to take a look at is the fact that we are using a national average versus data that would reflect the difference in the number of hours that such a thing would be used. This would apply particularly to air-conditioning units and furnaces.

Mr. **Moorhead**. I guess one thing that bothers some of us, we all want to save energy and we all want people to have an opportunity to save energy. We do not really like to have people mandated to certain things or forced to do certain things.

We do believe that poor people have the right to enjoy the best quality of life that they can. Sometimes, if you make each and every item that we use in life, including our homes that cost so much money, some of them will not be able to have them. They would rather be a little colder and use their equipment a little bit less. They have the right to do that in our country.

We are also concerned that we can get so involved in these programs, we look at the bottom line, how fuel-efficient is an item. We can mandate so much energy use and developing new items, the equipment that we have, and perhaps even putting people out of business and new businesses having to be started up that in the long run you will not save very much actual energy if you consider all of the potential energy costs that there are down the line.

But you do cause people tremendous economic dislocations. That is a problem that I am concerned with and I know that others are.

Is it possible that Federal minimum standards will become a de facto ceiling by allowing manufacturers to claim they meet the Federal efficiency standards, thereby dampening competition?

Mr. **Tribble**. That would be possible, certainly. I do think that the aggressive manufacturer will continue to try to be a little bit better because we have found that the energy efficiency is becoming a sales item. The person who can claim, and legitimately claim that their product is more energy efficient, they are using this information as a sales pitch.

Mr. **Moorhead**. Well, I totally agree with you. I think that costs and information, and the desire to cut the family budget can do more than any other single item in making our Nation energy efficient. I think you have to look to that marketplace. I know in saving gasoline and oil we have done a tremendous job. That is because the price of those products has gone up and people are very cognizant of how much they drive now because they do not like to pay $1.50 a gallon.

I think the same things are true in the way we take care of our homes. I know if I built a home I would consider solar because it might be more fuel efficient, at least for heating of water.

I think people are looking for those items and we have to give them that information. But in this country I am very concerned that we tell them, "You have to do something," and I do not like to see that happen.

Mr. Ottinger. The chair is going to have to ask the indulgence of both the witnesses and my colleague from California. The chair has a meeting at noon.

So, we will recess until 1:15. When we come back, I want to address myself primarily to the question of preemption. It may be that you want to ask an attorney from your Department to join us because there are some legal questions that are involved as to when preemption takes place and how it takes place, and the need for a possible revision of the statute in that respect.

We will adjourn until 1:15 p.m.

[Whereupon, at 12 o'clock noon, the subcommittee recessed, to reconvene at 1:15 the same day.]

AFTER RECESS

Mr. Ottinger. Our hearing will resume.

I see we have a new face at the table. Would you identify yourself?

Mr. Margolis. Eugene Margolis, senior staff attorney at the Department of Energy, Office of General Counsel on the Appliance Program Standards.

Mr. Ottinger. I guess that we really have two sets of considerations. One is the legal operation of the statute and the other is the policy side of it. The two sometimes are going to mix a little.

You can determine who is going to answer the questions. Is it your interpretation of section 327 that if there is a finding that no standard is required under Section 323 no standard will be issued, that that preempts State laws?

Mr. Margolis. Yes, Mr. Ottinger. But I would like to add that the States then have in section 327 the right to petition the Secretary of Energy to have the State standard which was more stringent than the Federal standard put into effect. The Secretary then has to make certain determinations after a hearing.

Mr. Ottinger. Let me go into some aspects of that determination. Section 327(a) says:

> This part supersedes any state regulation insofar as such state regulation may now or hereinafter provide for—

Then I guess we skip over to (a)(2)—

> Any efficiency standard or other requirement with respect to energy efficiency or energy use of a covered product (a) if there is a standard under Section 325 applicable to such product if such state regulation is not identical with such standard or (b) if there is a rule under Section 323 or 324 applicable to such product and such state regulation requires testing in accordance with test procedures which are not identical to the test procedures specified in such rule.

The other thing that concerns me is the provision in section 327(c):

> Notwithstanding the provisions of subsection (a) any state regulation which sets forth procurement standards for a state or political subdivision thereof shall not be preceded by the provisions of this part if such state standards are more stringent than the corresponding federal standards.

It would seem if there was no standard, virtually any state standard would be more stringent and ought not to be preempted.

Mr. Margolis. In response to your first question, Congressman, section 325(b) says, the last sentence:

For purposes of Section 327 a determination under paragraph (2) with respect to any type or class of covered products shall have the same effect as would a standard prescribed for such type of class under this section.

Under paragraph (2), the Secretary can find that no standard shall be prescribed. So, therefore, the statute says that a determination of no standard would have the same force and effect as a determination of a standard.

Mr. Ottinger. Is there any statutory history that would indicate that this 325(b) provision was intended to be included within the preemption, or is it intended for other purposes?

It says, "For the purposes of section 327" which is the preemption section, a determination would have the same effect. That is pretty specific.

Now, what do you do with 327(c), the provision which seems to indicate that notwithstanding the provisions of subdivision (a) which does contain that preemption, if the State has a more stringent standard it would be allowed to stand?

Mr. Margolis. Mr. Congressman, my understanding and interpretation of 327(c) is that if a State in their purchasing requirements, or a city—say New York City or New York State—would put out an order for certain types of vehicles, or of air-conditioners, or of water heaters, that they could designate the type of appliance that the city, State or municipality would want. They still could do so, even though the Federal Government has made a finding that there should be no energy efficiency standards.

This is for procurement purposes. So, the governmental body could purchase, if it wished, a high efficiency room air-conditioner or a water heater.

Mr. Ottinger. Or they could set standards for their own use at any level they wanted, with respect to efficiency; the same as a State.

Mr. Margolis. They could set for their own purchasing, but they could not impose it upon the manufacturers.

Mr. Ottinger. They could not impose it on another purchaser. What is your opinion as to the constitutionality of this provision?

Mr. Margolis. I have not studied it from that perspective. If you want my opinion at this moment, I think it is constitutional.

Mr. Ottinger. The 327(a) preemption.

Mr. Margolis. Oh, I am sorry, I thought you were talking about 327(c).

Mr. Ottinger. No. The prohibition on States to be able to adopt such standards as they see fit, where the Government makes the determination that it is not going to have a standard.

Mr. Margolis. Well, I understood when Congress passed the law, the reasoning behind it was so that manufacturers would not be inundated with a number of varying State standards, possibly 50 different standards. They have their distribution centers.

There was a court case upholding the constitutionality of something similar to this out in Chicago with packaging of phosphates. I cannot recall offhand the name of the case, but it was a fairly recent case from the circuit court, holding that it was proper for Chicago to pass a local ordinance which then said that certain types of cleansing soaps could not be sold in Chicago even though it disrupted the distribution in the surrounding areas.

So, I do believe that according to the legal precedent that has come before, that this section is constitutional.

Mr. **Ottinger**. In your opinion, when does supersession take place, when DOE publishes a rule in the Federal Register, or when time for comment expires, when the standard becomes effective?

Mr. **Margolis**. That question has been presented to us by a number of manufacturers, including the AHAM Trade Associationn, and by the State of California. In reading this statute, it can be read that it is at the date of prescription; it can also be read as the effective date.

The issue is still being studied and reviewed by the General Counsel at the Department of Energy. We have told the parties that have inquired at the time the standards are promulgated, that the Department would then come to a conclusion on this question.

It is a very difficult question. It takes into account what the parties, the States have done in the past to stop appliances below a certain minimum standard from importation into their State. We would not like to see that manufacturers then could join, during say, the 6-month hiatus that you are talking about and bring in appliances which were prohibited by that State. That is a very real issue and one that we very much understand the State of California's position on that.

But we have not come to any definite conclusion as to that issue.

Mr. **Ottinger**. How does DOE plan to handle this question when it gets to the point of promulgating standards or no standards with respect to the exemption process? Do you intend to go out for exemption applications before the rule is published? We are going to get a timing problem.

Mr. **Tribble**. So far as I know, we have not addressed that.

Mr. **Ottinger**. Well, the two of you ought to address it because there ought to be an opportunity for the States to come in in a timely manner.

Mr. **Margolis**. We have told the States that we would decide this issue well in advance, so that if the finding—and I do not mean to state what the finding will be now—but assuming that the finding would be at the prescription date and not the effective date, that we would notify all the parties well in advance so that they could then petition the Secretary. The Secretary might be able to, for the timing being while he decides the case, not to allow the products into that State.

So, there is no question, in response to your inquiry, that we will give all the parties sufficient notice so that they could use the 327(b) group to petition for more stringent standards.

Mr. **Ottinger**. Have you had anything from the States on this matter?

Mr. **Margolis**. Only the State of California.

Mr. **Ottinger**. The State of California. Did you give a formal reply to the State of California's inquiry?

Mr. **Margolis**. I believe that on May 1, a response was given to Chairman Schweikert of the California Energy Commission which stated in essence what I have testified to.

Mr. **Ottinger**. Is there any reason why we should not have a copy of the correspondence?

Mr. **Margolis**. No.

Mr. **Ottinger**. We would appreciate seeing that, and having it for the record.

[The document referred to follows:]

Department of Energy
Washington, D.C. 20585

May 1, 1981

Honorable Russell L. Schweickart
Chairman
California Energy Commission
1111 Howe Avenue
Sacramento, California 95825

Dear Mr. Schweickart:

This is in reply to your concern and that of the California Energy Commission regarding the time at which State appliance energy efficiency standards would be superseded by Federal standards.

As you are no doubt aware, the future of Federal energy efficiency standards for appliances is at present uncertain. The Department is proceeding with a thorough review of the defensibility of standards even under existing law. Applicable law provides that no standards are to be prescribed if it is determined that establishing standards would not result in significant conservation of energy or would not be technologically feasible or economically justified. Moreover, the Administration has proposed in its recent budget that Federal standards not be funded. The Administration is of the view that Federal standards should not be funded because they would be excessively burdensome and unnecessary in light of developing free market conditions.

We would expect to provide you with our views on the supersession issue before there is any need to have this issue resolved.

I hope that this information is useful to you.

Sincerely,

Theodore Wilson

Theodore Wilson
Acting Assistant General Counsel
Conservation and Solar
Applications

cc: W. M. Chamberlain

Mr. **Ottinger**. We are very concerned that States not be precluded from the rights under the statute when, as, and if standards are published so that there is not any gap in which there is uncertainty as to the application of the State standards.

In other words, there ought to be time enough so States can get a determination under 327(b) before whichever of the two actually is determined as to what it triggers preemption, publication of the standard in the Federal Register or the effectiveness of the standard.

Mr. **Margolis**. Yes, sir, (b)(4) of 327 gives the notice and comment provisions on a petition.

Mr. **Ottinger**. Our concern is that during that time period there be a reasonable opportunity for the Secretary to make a decision, so that States not have their standards lifted and then, if the Secretary makes an affirmative decision have them reimposed. That, it would seem to me, would cause a considerable burden on the State and interstate commerce both. That would be highly undesirable.

So, I hope, Mr. Secretary, in working this out, that procedure is adhered to. If Counsel's Office determines that publication constitutes preemption, then you file notice to the States—I think there are some four or five of them that either have their own standard at this point, or are in the process of doing it. One of them is New York that has passed standards this past week. They should be given adequate opportunity and every effort should be made to make a determination on that application before preemption takes place.

Now, what of the standards for making an exception. The basic standard seems to be that State regulations would be allowed to continue in effect if there was a significant State or local interest to justify such State regulation and such regulation contains a more stringent energy efficiency standard than the Federal standard—of course, if there is no Federal standard that would not apply—and then an overriding concern that the regulation does not unduly burden interstate commerce.

I wondered whether you had yet examined what your criteria are going to be for determining what would constitute an undue burden on interstate commerce, and what constitutes a significant State or local interest such as to justify regulation.

Mr. **Margolis**. In the June 30th proposed rule, subpart (D) entitled, "Petitions to supersede state regulations, petitions to exempt state regulation from supersession." Section (b)(1) under 327 is when any person, including a manufacturer, petitions the Secretary to have a State regulation superseded.

Section (b)(2) is for a State to have its more stringent rule enforced, which was preempted during that period of January 1, 1978 to July 1, 1980; and (b)(3) is that section where the State can petition the Secretary to have its more stringent rule put into effect which was not in that automatic preemption period.

So, that is why you have the three various paragraphs, (1), (2), and (3).

Mr. **Ottinger**. What does paragraph (2) provide, is that a grandfathering?

Mr. **Margolis**. Yes, it was a grandfathering of all State standards that were in effect prior to January 1, 1978 until the Federal final standards come out. Then of course, if they are not identical to the Federal standards, they are preempted.

But those standards have always been in effect. It was only State standards that were promulgated after January 1, 1978 to July 1, 1980.

So, in the Federal Register which is volume 45, page 43976, and then we turn to 44035, is the information that the Secretary thinks would be necessary for him to make a determination on a petition. This went out for public comment during the hearings that occurred last summer.

My recollection is that there was very, very little comment by either States or manufacturers, asking that some of these paragraphs be deleted or other paragaraphs be added.

Mr. **Ottinger**. What is the basis for the determination under this publication, first with respect to whether there is a significant State or local interest to justify the State regulation and, second, whether the State standard would unduly burden interstate commerce?

Mr. **Margolis**. Excuse me for interrupting you, sir.

It would be for each case to be decided on its own facts, and for the Secretary to make a decision based on such facts.

Mr. **Ottinger**. There was no specification in this publication as to what kind of measuring rod would be used to determine the State interest or burden on interstate commerce?

Mr. **Margolis**. We ask what is the effect of complying with the State regulations, the costs, the material costs, the transportation costs, the retooling costs. What products, how much energy will be saved. We do go down, I think, a fairly exhaustive list of items to present both manufacturers and a governmental entity.

Mr. **Ottinger**. Is there any indication as to how these factors will be weighed?

Mr. **Margolis**. No, sir. Just like in our statute they give us seven enumerated facts, you might say, to look at. Again, the statute does not tell us if you weigh one twice as much as two. That is left to the determination of the Secretary.

Mr. **Ottinger**. Mr. Assistant Secretary, what is your posture on this matter. Have you examined and thought about issuing some kind of guidelines or standards for the standards? Do you think there ought to be such criteria established?

Mr. **Tribble**. To answer the first part of the question, we have not set any thresholds. My inclination would be that there would be a range in these things so that one particular requirement would not necessarily settle the question. But still, you would be able to look at the overall effect.

Mr. **Ottinger**. Would you think this would be done on a straight cost-benefit basis, or how does one approach making this kind of determination? California is certainly one of the instances we will be dealing with. They have a very critical effort to try to save electricity and take probably more measures than any other State in the country to try to institute conservation.

They will probably have to build substantial additional plants if they do not succeed or are prevented by the Federal Government from succeeding. How does one take into account those factors?

Mr. **Tribble**. The cost-benefit would be one of the criteria, one of the things to be looked at. There may very well be others. They do not come to mind immediately.

Mr. **Ottinger**. The automobile standards in California have been very helpful to the country. California had special reasons there because of its smog for applying more stringent standards and they were permitted by law to do that.

It showed the automobile companies that, lo and behold, they could produce an automobile with that much more stringent standards than applied to the rest of the country and still be economically successful.

So, I would hope that in applying these exemption procedures, the state of the law being as your counsel describes it, that that would be one of the factors taken into account. If California and New York, for example are permitted to do so, then we get some more efficient appliances actually produced and we will be able to find out what the costs of them are.

If States are prohibited from doing that, then you are not likely to get that beneficial information. Indeed, if they find they can do it successfully for California and New York, maybe they will find they can do it for the rest of the country as well.

I would really like to see some thought given to this and to get some kind of guideline or at least a discussion paper on how this kind of determination ought to be made, since it will be a very important decision to reach in connection with promulgation of standards or no standards.

I am also somewhat concerned about this kind of a preemption. It may be our fault, Mr. Margolis. I can understand where the Federal Government acts in a certain area in preempting conflicting actions. I find it much more difficult to cope with the situation where the Government makes a determination not to act and preempts the States from doing so.

I wondered if you could just give me a memorandum as to what the constitutional effects of that are. I do not know if there has been a determination.

I would like that question on constitutionality examined, if you could. Is that reasonable for you to be able to do?

Mr. **Margolis**. I would have to check with the General Counsel.

Mr. **Ottinger**. All right, if you could get back to us on that. If not, or even if so, we might have the CRS or some other body take a look at this.

I want to turn now to counsel, first the majority counsel to ask any questions that you might like. It does not have to be on State preemption, we have Secretary Tribble here.

I would like to say, Mr. Secretary, that I think you are making a real effort on the conservation end, and I do appreciate your cooperation with the subcommittee. We will be prodding you and urging you on all the way—I am speaking for myself at any rate and am speaking for some of the others. We are very encouraged and pleased to have you there.

Mr. **Tribble**. Thank you very much, Mr. Chairman.

Ms. **Freeman**. Thank you, Mr. Chairman.

Mr. Tribble, in the June 29 memo which we referred to a number of times earlier, and in the program's response, estimates were made on how much appliance standards could save in power plant equivalents.

That June 29 memo estimates 5.8 power plants could be avoided. The Program's response estimates 15.8 plants from standards for three products. Have you included the regular savings from these avoided plants in your analysis?

Mr. **Tribble**. That was the number that I believe I called into question this morning, where the 0.6 quads was the equivalent of a 1,000 megawatt plant, and equivalent to the output of that plant had a capacity of .65.

The number, I think, is in error there. It could be that the different numbers that you have there, one the 5.8 and the other the 15-point something, could reflect a correction of that. Those two numbers may come from that reason. Other than that, I do not know of any reason why they would be different.

Ms. **Freeman**. I understand. Nevertheless, does the analysis include these savings?

Mr. **Tribble**. I am told that it does not.

Ms. **Freeman**. Could you tell me why it does not?

Mr. **Tribble**. I am going to defer to Dr. Savitz on that.

Ms. **Savitz**. I do not know the answer, I would have to get it for the record. It does include energy-cost savings. I mean, in the cost analysis our numbers do include what the energy cost savings would be, but not to the rate payers all across. It is done on an individual client basis.

[The following information was received:]

The 0.06 quad equivalent for a 1,000 megawatt plant is correct. It reflects avoided cost for both construction and operation of such a plant. The fuel efficiency for the average utility is only 35 percent requiring an input of 0.055 quads of energy to produce 0.017 quads of electricity. Cost avoidance estimates must take into account energy consumption by the utility itself. Since utilities are permitted to pass through to consumers fuel costs, impacts on rate payers are considered.

Mr. **Tribble**. It is my understanding that is intended to reflect the saving of the capital equipment necessary to build those plants. I think if you look at it in that light, of course in view of the fact that the capital equipment cost is in fact passed on to the ratepayers, that it would be included.

Ms. **Freeman**. Do you believe that these savings should be balanced against manufacturers' increased costs?

Mr. **Tribble**. Certainly, they should both be taken into consideration.

Ms. **Freeman**. The President's fiscal year 1982 budget request is zero dollars for standards work and analysis. There is 600 K for test procedures only, and as I understand it, the recent reorganization shows the program staff reduced from the number of 13 to 6; is that accurate?

Mr. **Tribble**. Yes, that is right.

Ms. **Freeman**. How do you anticipate being able to do the analysis with no money and approximately half your staff?

Mr. **Tribble**. We will be hard pressed. As you know, the Administration has requested no funds on this. If the Congress does in fact accept that, then presumably that would prevent us from going ahead with the examination of the standards. We would expect to get a great deal of it done before fiscal 1982.

Mr. **Ottinger**. How much of fiscal 1982 funds are available for this purpose?

Mr. **Tribble**. Fiscal 1981, $2.14 million.

Mr. **Ottinger**. How much of that is unexpended at this juncture, do you know?

Mr. **Tribble**. No, I am sorry, I do not.

Mr. **Ottinger**. Why not furnish that for the record.

Ms. **Savitz**. About $300,000.

Mr. **Ottinger**. Is that sufficient to be able to complete the work?

Ms. **Savitz**. It is enough for us to get the documents out for public comment.

Mr. **Ottinger**. But not enough to analyze the results when you get them back. That would be in fiscal 1982.

Mr. **Tribble**. That is right, sir.

[The following response was received:]

Of the $2.14 million designated for expenditure on the development of energy efficiency standards in fiscal year 1981, $300,000 is unexpended at this time. This money, however, is earmarked for two procurement actions. $150,000 for Science Applications, Inc., to continue support of the program office in development of standards documentation and $150,000 for MITRE Corporation to conduct an independent analysis of the DOE documents for its sufficiency.

Mr. **Ottinger**. Will you then request additional funds, a supplemental appropriation, to be able to complete the work on it?

Mr. **Tribble**. I would expect that under the present guidelines that we have been given, and the fact that this was zero budgeted, that we would not.

Mr. **Ottinger**. Well, you are faced then with a very peculiar situation because you are mandated to do something for which no funds are provided. I do not know where that leaves us.

Mr. **Tribble**. We thought a great deal about that, and I do not know for sure. Maybe my friend from GC does, but I do not think they have come to a full determination of that yet either.

Mr. **Ottinger**. Well, I would ask that you take this up with the Secretary and with OMB because I do think that it is important to make a rational determination on it. Also, as I indicated, the criteria in the statute are quite clear that if there is no basis for the decision and the statute is not complied with, then I think you are subject to a lawsuit on this question, which is being contemplated.

So, I think that it is imperative that funds be provided to be able to make an analysis that will stand up to the criteria of the statute.

Do you have any problem with that, Mr. Margolis?

Mr. **Margolis**. No. As the Secretary has said, in the General Counsel's Office it is an open question and it is a very difficult question.

Mr. **Ottinger**. I think that problem ought to be addressed, and I would really like to have the Secretary address it. We will know in a relatively short period of time what the appropriations situation is. If in fact there are no appropriations provided for this, then we would like an expression of intent from the Department as to what you are going to do to comply with the statute.

Does staff have further questions for Mr. Margolis?

Ms. **Freeman**. I have one that many involve Mr. Margolis.

Mr. **Ottinger**. All right, go ahead.

Ms. **Freeman**. In light of the problems with budget and staff, would that also prevent you from exercising the preemption authority?

Mr. **Margolis**. The preemption authority hinges on a determination by the Secretary as to whether there are standards or there are no standards.

If no determination is made—which I think your point is—then the States would be left open to have their own efficiency standards. If that occurs, then the manufacturers under 327(b)(1) can petition the Secretary to have the State standard superseded, which is the reverse of the situation.

But again, until there is a determination—and that determination may be for a standard or for no standard—that is the only thing that makes section 327, the preemption section, take effect.

Ms. **Freeman**. Thank you. I have no further questions that would be directed to Mr. Margolis.

Mr. **Ottinger**. Mr. Margolis, I do not want to impose unduly on your time if you have other things you have to do. As I say, you are welcome to stay if you would like to.

Does minority counsel have any?

Mr. **Rich**. Not for Mr. Margolis.

Mr. **Ottinger**. Not for Mr. Margolis. Well, then, you may stay or not stay, as you see fit.

Mr. **Margolis**. Thank you very much.

Mr. **Ottinger**. Thank you for being with us.

Minority Counsel, go ahead.

Mr. **Rich**. Mr. Tribble, since the enactment of NECPA, can you tell us how much money has been put in this program and how many people have been involved in the program, including as far as the people and the money, outside consultants?

Mr. **Tribble**. The fiscal 1981 number was $6 million in the Carter budget and was $4.082 million in the Reagan 1981 budget. I am under the impression that the fiscal 1980 budget was also on the order of $6 million. So, it would be approximately $10 million, the best information that I have right here.

Mr. **Rich**. What about fiscal year 1979?

Mr. **Tribble**. I am sorry, I do not have that.

Mr. **Rich**. Would you provide it for the record?

Mr. **Tribble**. Yes.

[The following information was received:]

The following table provides a breakout of resources (money and people) expended on the Energy Conservation Program for Consumer Products Other Than Automobiles since the enactment of NECPA.

	FY 1979	FY 1980 (Millions)	FY 1981
Total dollars	$ 4.95	$ 6.00	$ 4.082
Standards Development*	2.571	3.132	2.140
Test Procedures Development	1.479	1.868	1.617
Consumer Education	.900	1.000	.325

Personnel	Government (Manyears)			Contractor (Manyears)		
	FY 1979	FY 1980	FY 1981	FY 1979	FY 1980	FY 1981
Standards Development **	7	7	7	32	39	26
Test Procedure Development	3	3	3	18.5	23	20
Consumer Education	1	1	1	1	2	2

* Includes DOE National Laboratory Support

** Contractor manyears based on $80,000/manyear. The majority of contractor work in support of test procedures development was performed by the National Bureau of Standards.

Mr. Rich. The figures since NECPA was enacted, and the amount of people involved within and without DOE.

Do you take these figures into consideration when you deal with economic justification, the impact on the taxpayer?

Mr. Tribble. I do not believe we do.

Mr. Rich. That is all I have.

Ms. Freeman. I just have a couple more questions.

Mr. Ottinger. Go ahead.

Ms. Freeman. DOE published significant energy savings, in the June 1980 NOPR, and the rationale for that number. You stated this morning that you felt this number may be low, but as I understand it, you have at this point no suggestion for what that number should be or how to calculate an adequate number?

Mr. Tribble. That is right, that is a subject that is under discussion internally. Another question related to that is whether we should come up with a number and propose it, or whether we should simply propose the question as to whether or not that number is adequate.

We would expect to resolve that, of course, before we come out and do one or the other.

Ms. Freeman. Without offering a suggested level or method of calculation, do you not feel that when you open it up to public comment, the response from industry will be predetermined?

Mr. Tribble. I do not know, there are manufacturers on both sides of this issue. I think that we would have comments over a range if we just simply opened it for that kind of response. Hopefully, we would have some rationale for whatever number was finally adopted.

I do not know that the rationale that was in the June 30 regulations had been given a lot of consideration, it may have; but I am not aware of how that was determined.

But it would seem to me that we would need to come up with some figure that could be sustained by reason and come forth with a proposal on that basis.

Ms. Freeman. And you would expect to request from the public their ideas and suggestions on what constitutes significant energy?

Mr. Tribble. Yes. If we make a proposal we would ask for comments on the proposal. If we decide not to make a proposal, we would ask for comments on what the commenters may consider to be significant.

Ms. Freeman. I assume that the results of the analysis which would be published by DOE in the Federal Register, would include energy savings by product type?

Mr. Tribble. Yes.

Ms. Freeman. One thing I would like to clarify is a reference this morning to a memorandum of June 30 on the guidance on the criteria for significant energy conservation savings. We mentioned with the June 30 memo a response memo from the Conservation Program Office and SAI. Is that something that you can confirm, Dr. Savitz?

Ms. Savitz. What is the question regarding?

Ms. Freeman. The memo that we referred to this morning, to clarify it's origin for the record.

Ms. **Savitz**. It is provided by the Program Office. It is just providing some information regarding the June 30 memo that Policy had sent to us.

Ms. **Freeman**. And that was developed by the Conservation staff from your office, and the SAI, technical support staff.

Thank you.

Mr. **Ottinger**. I want to thank you for your help to the subcommittee. I emphasize again to you that we would like to have a timetable as quickly as you can establish it. How long do you think that would take?

Mr. **Tribble**. We would hope to get a determination of that certainly by the end of next week.

Mr. **Ottinger**. The end of next week?

Mr. **Tribble**. Yes.

Mr. **Ottinger**. There is no chance to get it this week before we adjourn on Friday or Saturday?

Mr. **Tribble**. We will make every effort to.

Mr. **Ottinger**. This is a question of establishing some kind of a timetable.

Mr. **Tribble**. I would think so.

[The following response was received:]

We have established a special task force within DOE to accelerate the completion of the revised proposed rule. This task force has been directed to complete a Notice of Proposed Rulemaking within 60 days. Under the new regulatory review procedures established by Executive Order, OMB will require another 60 days to review the proposal, prior to publication.

Mr. **Ottinger**. All right. We would also like to get such information as you can supply us on what type of detail is going to be included in the Federal Register notice so we can have a chance to look at that. Maybe we can be helpful.

[The following response was received:]

Current planning calls for issuance of an amended Notice of Proposed Rulemaking, to include identification of major issues for public comment; analysis of public comments on the June 30, 1980 rulemaking; description of the methodology for setting standards; determination of need for, and level of, standards by product category; analysis of the macro-economic impacts of standards proposed; description of certification, enforcement and waiver procedures; an environmental assessment; regulatory analysis; and public comment procedures.

We would appreciate it if we could have the opportunity for any of the members of the staff, to submit additional questions, if necessary and have them answered.

Mr. **Tribble**. Surely.

Mr. **Ottinger**. I think this was a very useful hearing today, and again, thank you for your help.

We stand adjourned.

[Whereupon, at 2:10 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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APPLIANCE EFFICIENCY STANDARDS

FRIDAY, MAY 21, 1982

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Energy Conservation and Power,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Richard L. Ottinger (chairman) presiding.

Mr. Ottinger. The Subcommittee on Energy Conservation and Power this morning is going to examine questions involving the Department of Energy's proposed "no standard" standard for energy efficiency of major home appliances.

This administration is determined not be persuaded by the facts. These standards, under the guise of regulatory reform, were targeted for extinction by the administration long before the manipulated analysis justifying the desired, unsupported conclusion was completed.

There is hardly a more distorted example of voodoo economics undercutting sound energy policy with energy consumers as the victims. I concur with a leading proponent and high priest of the marketplace, OMB Director David Stockman, when he stated as Congressman Stockman that—

> Now that consumers are faced with a sharply rising cost of electricity, the central policy choice for Congress is whether to rely on market forces alone to reverse the trend to inefficient, low first-cost appliances, or whether to interpose some form of mandatory efficiency program. There is some reason to doubt that market forces alone will bring about the needed shift to more efficient appliances. In the face of these factors inhibiting the operation of market forces in the consumer appliance sector, a regulatory program designed to impose life-cycle cost purchasing on the consumer appears justified.

According to numerous studies and repeated testimony, the marketplace is deficient with respect to appliance efficiency due to the fact that half of the high energy using appliances such as furnaces are purchased by builders and developers who will not be paying the operating costs. Moreover, standards for appliances would be highly cost effective—DOE's 1980 proposal indicated they would save 2 billion barrels of oil by the year 2005 and would save consumers up to $19.3 billion.

The General Accounting Office has just submitted a report that calls into question the reliability of the Department's analysis seeking to justify its "no-standard" standard and supporting the cost-effectiveness of a Federal standard. In these hearing GAO will present its findings and DOE will be given an opportunity to respond.

We will also hear from State representatives and from manufacturers who will address the injurious and far-reaching consequences of this proposed "no standard" State preemption. This Federal preemption of a State's authority to establish standards reaches the worst of all possible conclusions. Not only is the administration violating Federal law by issuing an unjustified "no standard," but it is nullifying energy efficiency requirements of 48 States and preventing States from issuing future regulations. This "no standard" preemption makes a mockery of the "New Federalism" and is the antithesis of President Reagan's supposed adherence to States rights principles. Unfortunately, this action adds to a long list of inconsistencies in the Reagan energy policy.

I have introduced H.R. 6202, legislation cosponsored by 50 of my colleagues, that would amend the Energy Policy and Conservation Act to eliminate this preemption for a "no-standard" determination.

[The text of H.R. 6202 follows:]

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97TH CONGRESS
2D SESSION

H. R. 6202

To amend the Energy Policy and Conservation Act to eliminate preemption of a State's authority to establish or enforce any energy efficiency standard or similar requirement if a Federal energy efficiency standard has not been established.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1982

Mr. OTTINGER introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Energy Policy and Conservation Act to eliminate preemption of a State's authority to establish or enforce any energy efficiency standard or similar requirement if a Federal energy efficiency standard has not been established.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 325(b) of the Energy Policy and Conservation Act (42 U.S.C. 6295(b)) is amended by striking out: "For purposes of section 327, a determination under paragraph (2) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class) under this section.".

SEC. 2. Section 327(b) of such Act (42 U.S.C. 6297(b)) is amended by striking out paragraphs (1), (2), and (5), and by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

SEC. 3. The amendments made by this Act shall take effect 30 days after the date of the enactment of this Act.

Mr. OTTINGER. There are two matters of some delicacy which I will try to pay some attention to today.

It is not the intent of the Chair to interfere with the rulemaking which is currently in progress at the Department of Energy. I have submitted my views on that matter as a part of the rulemaking process. Rather, the purpose of this hearing is to examine whether revisions in the law such as those relating to preemption of State standards are warranted. The issues are necessarily similar to those involved in rulemaking, but it is the legislative issues which are the primary consideration here today.

Also, there is litigation under way with respect to the propriety of the Department of Energy analysis in this matter, and again, we will try to confine ourselves to the legislative matters, to the degree to which the Department has adhered to the legislation that we passed,

I would note, however, that this is a matter will which we have been concerned for some time.

The "no standard" standard, the Department-ignored time limits in the legislation—we are consistently concerned about these as the legislative body which created those standards.

We will start today with a panel of State representatives and manufacturing representatives, and then I will take the Department of Energy and the General Accounting Office together at the end.

The State representatives are Mr. David Conover, energy program director of the National Conference of States on Building Codes and Standards, and from New York, the Honorable Angelo F. Orazio, New York State Assembly. We have the Honorable Arturo Gandara, commissioner for the California Energy Commission, and Elgie Holstein, energy committee director, National Conference of State Legislators.

It is the practice of this committee to receive your statements in full and to try to get at matters of concern through questions, so your full statements will, without objection, be considered for the record.

Let me recognize my colleague, Mr. Corcoran.

Mr. CORCORAN. I do not have any opening statement to make, but I would like to leave the record open for our colleague from California, Mr. Moorhead, who has an interest in this subject, and may have an opening statement that he would like to make.

Mr. OTTINGER. We always welcome Mr. Moorhead's opening statements. We will leave the record open for that purpose.

Would you like to question the witnesses at this time?

Mr. CORCORAN. Yes, may I defer just for a moment?

We do have two documents, Mr. Chairman, that I would seek unanimous consent in order to put them into the record.

One is a copy of a sterling piece of legislation, H.R. 5497, which I am a cosponsor of, and the other is a response to the sponsor of that legislation from Tenney Johnson, the General Counsel of the Department of Energy.

Mr. OTTINGER. Without objection, they will be placed in the record.

[The text of H.R. 5497 and the DOE response follow:]

[H.R. 5497, 97th Cong., 2d sess.]

A Bill To reform the Federal regulation of energy use and allocation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Energy Consumer Regulatory Reform Act of 1982".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the Government, through restrictions on the use and allocation of energy resources, has increased energy costs to consumers;

(2) the costs to energy consumers of Government restrictions on the use and allocation of energy resources exceed the consumer benefits in terms of energy saved and national security;

(3) Federal energy restrictions impose massive paperwork and compliance burdens on energy distributors, public utilities, and energy producers, the costs of which are ultimately borne by energy consumers;

(4) Government restrictions on energy use and allocation have created artificial energy shortages, reduced competition among businesses, increased inflation in energy prices, and contributed to the financial instability of public utilities;

(5) State and local governments should be primarily responsible for the regulation of energy conservation activities by public utilities, the building industry, energy producers and developers, small businesses, and energy consumers; and

(6) reform of Government restrictions on energy use and allocation is in the interest of public health, safety and welfare, would reduce consumer energy costs, and would provide for a more equitable and efficient allocation of energy resources among citizens in the National economy.

(b) The purpose of this Act is—

(1) to reduce energy costs to consumers;

(2) to reform the regulation by the Federal Government of energy use and allocation;

(3) to foster competition;

(4) to eliminate Government waste, paperwork, and unnecessary spending;

(5) to provide more equitable and efficient allocation of energy resources among citizens; and

(6) to restore balance between the Federal Government and the State and local governments in the regulation of energy use and allocation.

LEAST-COST BUILDING ENERGY EFFICIENCY IMPROVEMENTS

SEC. 3. (a) The Energy Conservation and Production Act is amended by striking out title III, relating to building energy performance standards.

(b) The National Energy Conservation Policy Act is amended—

(1) in part 2 of title II, by striking out section 231, and in section 233, by striking out "part A of the Energy Conservation in Existing Buildings Act of 1976,"; and

(2) in the table of contents, by striking out the item relating to section 231 of part 2 of title II.

(c) Paragraphs (3) and (4) of section 504(c) of the Housing Act of 1949 is amended by inserting "(as in effect immediately before the date of the enactment of the Energy Consumer Regulatory Reform Act of 1982)" after "Existing Buildings Act of 1976" each place it appears.

(d)(1) Section 103 of the Energy Reorganization Act of 1974 (42 U.S.C. 5801) is amended by striking out paragraph (7), and by redesignating paragraphs (8) through (12) as paragraphs (7) through (11), respectively.

(2) Section 108 of the Energy Reorganization Act of 1974 (42 U.S.C. 5818) is amended—

(A) in subsection (b), by inserting "and" at the end of paragraph (2), by striking out "; and" at the end of paragraph (3) and inserting a period in lieu thereof, and by striking out paragraph (4); and

(B) by striking out subsection (e).

FULL COMPETITION IN RESIDENTIAL ENERGY CONSERVATION

Sec. 4. (a) The National Energy Conservation Policy Act is amended—

(1) in title II, by striking out part 1, relating to residential energy conservation; and

(2) in the table of contents, by striking out the items relating to part 1 of title II.

(b) the Energy Security Act is amended—

(1) in title V, by striking out subtitle B, relating to the residential conservation service; and

(2) by striking out the items in the table of contents relating to subtitle B of title V.

FULL COMPETITION IN COMMERCIAL ENERGY MANAGEMENT SERVICES

Sec. 5. (a) The National Energy Conservation Policy Act is amended—

(1) by striking out title VII, relating to the commercial and apartment conservation service; and

(2) in the table of contents, by striking out the items relating to title VII.

(b) The Energy Security Act is amended—

(1) in title V, by striking out subtitle D, relating to the commercial and apartment conservation service; and

(2) by striking out the items in the table of contents relating to subtitle D of title V.

LEAST COST CONSUMER APPLIANCE EFFICIENCY STANDARDS

Sec. 6. The Energy Policy and Conservation Act is amended—

(1) by striking out sections 321(a)(6); 325; 326(b)(3)(A); 329; 332(a)(5); 333; 335; 336(a)(2); 337; and 339; and subsections (a)(2), (b), and (c) of section 327, relating to energy conservation program for consumer products other than automobiles; and

(2) in section 326(b)(5), strike reference to section 325; in section 324, strike reference to section 325; in section 336(a), strike reference to sections 325(a) and 327(b); in section 336(b)(1) and (2), strike reference to section 325.

ASSURING THE INDEPENDENCE OF STATE AND LOCAL PUBLIC UTILITY COMMISSIONS

Sec. 7. (a) The Public Utility Regulatory Policies Act of 1978 is amended—

(1) by striking out titles I and III, relating to retail regulatory policies for electric utilities and gas utilities;

(2) by striking out section 603, relating to the utility regulatory institute; and

(3) by striking out the items in the table of contents relating to—

(A) titles I and III; and

(B) section 603.

(b) The Energy Conservation and Production Act is amended by striking out title II, relating to electric utilities rate design initiatives.

VOLUNTARY INDUSTRIAL ENERGY CONSERVATION REPORTING PROGRAM

Sec. 8. The Energy Policy and Conservation Act is amended—

(1) by striking out parts C and E of title III, relating to industrial energy conservation; and

(2) in the table of contents, by striking out the items relating to parts C and E of title III.

INDEPENDENT STATE AND LOCAL AUTHORITY TO MEET ENERGY EMERGENCIES

Sec. 9. (a) The Emergency Energy Conservation Act of 1979 is hereby repealed.

(b) The Energy Policy and Conservation Act is amended—

(1) by striking out part A of title II, relating to general emergency authorities; and

(2) by striking out the items in the table of contents relating to part A of title II.

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Department of Energy
Washington, D.C. 20585

MAY 13 1982

Honorable Carlos Moorhead
House of Representatives
Washington, D.C. 20515

Dear Mr. Moorhead:

This responds to your request for Department of Energy comments on H.R. 5497, a bill cited as the "Energy Consumer Regulatory Reform Act of 1982".

The bill would repeal a number of conservation and related energy programs.

The Department supports repeal of energy regulatory statutes that impose burdens on small businesses and consumers and artificially alter the market for energy resources and conservation. H.R. 5497 is a step in the right direction to achieve that purpose; however, we have a number of comments and recommendations for improvements in the bill:

a. Section 3(a) would repeal the statutory authority for the Building Energy Performance Standards (BEPS) Program. Subtitle D of title X of the Omnibus Budget Reconciliation Act of 1981 amended the BEPS program, making it voluntary. In light of this legislative change and the fact that DOE's 1983 budget request includes no funding for BEPS, we support repeal of that program.

b. Section 3(b) and (c) would repeal amendments to the weatherization program.

c. The repeal of the Energy Extension Service (EES) provision in section 3(d)(1) is consistent with the Department's 1983 budget request.

d. Repeal of the Residential Conservation Service program in section 4(a) and the Commercial and Apartment Conservation Service program in section 5(a) is consistent with the Department's 1983 budget request and with the underlying policy that the marketplace and not Federal regulations will speed application of energy-saving technologies. Section 4(b) and 5(b) are unnecessary because the laws they would repeal would be repealed by sections 4(a) and 5(a).

e. Section 6 would repeal most of the appliances program. All aspects of the program dealing with energy efficiency standards would be eliminated, as would citizen suits, consumer education programs and both DOE and FTC enforcement provisions. While the Department agrees that energy efficiency standards for appliances should be eliminated and that consumer education programs should be eliminated, it supports continuation of the appliance labeling program. This program, by providing information to consumers on the efficiencies and operating costs of appliances, assists the functioning of the free market. The bill, however, would effectively eliminate the labeling program by striking section 333 of the Energy Policy and Conservation Act (EPCA) which contains enforcement provisions not only for the standards program but for the labeling program. Also the bill would repeal section 329 of EPCA that permits the government to obtain information necessary for the labeling program. Accordingly, we recommend that section 6 of H.R. 5497, page 5 line 24 through page 6 line 10, be redrafted as follows:

"SEC. 6. The Energy Policy and Conservation Act is amended --

"(1) by striking sections 321(a)(6); 325; 326(b)(3)(A); 327a(2), (b), and (c); 332(a)(5); 336(a)(2); and 337; relating to consumer products other than automobiles;

"(2) by striking all references to the sections listed in section 6(1) wherever they appear, including: all reference to section 325 in sections 323(a)(6)(B), 326(b)(5), 333, and 336; and all references to section 332(a)(5) in section 333 and 334; and

"(3) in the table of contents, by striking the items relating to sections 325 and 337."

f. Inasmuch as the Administration has proposed an end to interventions in State electric and gas rate proceedings under titles I and III of PURPA, the Department does not object to section 7(a) of the bill, which would repeal those titles. As you noted in your statement when introducing the bill, most State regulatory authorities already have decided whether they will adopt the PURPA standards because of decisional deadlines in that Act.

g. Section 7(b) of the bill, consistent with our budget request, would eliminate Electric Utility Rate Design initiatives under title II of the Energy Conservation and Production Act.

h. Section 8 would repeal parts C and E of title III of the Energy Policy and Conservation Act dealing with pumps and motors, and industrial energy efficiency improvement targets. This repeal is consistent with administration policy.

i. Section 9 would repeal the voluntary industrial energy conservation reporting program under the Energy Policy and Conservation Act. This repeal is consistent with Administration views.

The Department of Energy supports enactment of H.R. 5497 subject to the foregoing comments and recommendations.

Enactment of H.R. 5497 would not have a significant impact upon the budgetary requirements of the Department of Energy.

The Office of Management and Budget has advised that, from the standpoint of the President's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

R. Tenney Johnson

R. Tenney Johnson
General Counsel

Mr. Corcoran. I would like to ask the State witnesses a question. Are you familiar with the section in the law that affects these appliance efficiency standards which provides for a petition procedure so that in the event the States want to establish their own standards, they can, in effect, thwart the preemption?

TESTIMONY OF ANGELO F. ORAZIO, ASSEMBLYMAN, NEW YORK STATE ASSEMBLY; ARTURO GANDARA, COMMISSIONER, CALIFORNIA ENERGY COMMISSION; DAVID R. CONOVER, ENERGY PROGRAMS DIRECTOR, NATIONAL CONFERENCE OF STATES ON BUILDING CODES AND STANDARDS, INC.; AND ELGIE HOLSTEIN, NATIONAL COMMITTEE DIRECTOR, NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. Orazio. Yes.

Mr. Corcoran. What do you think of that procedure? Is it adequate, inadequate? What would you like to see done, if necessary, to modify that?

Mr. Orazio. As a matter of fact, I do not think that there has been any opportunity to utilize this procedure as far as New York State is concerned.

There have been no standards promulgated by the Department of Energy.

Mr. Corcoran. But, even in that event under the procedure, if the State of New York had standards that it wanted to apply in this case under current law, there is a procedure whereby you could apply to the Department of Energy and get consideration of the State standards, is that not true?

Mr. Orazio. Yes, that is true. I am not sure I have that much confidence, however, in the current Department of Energy's willingness, based even on testimony and the impression that I got yesterday at the Department of Energy hearings, that they would favorably receive such requests for waivers, for example.

Mr. Corcoran. Would that lack of confidence restrict you from using the procedure that the law provides?

Mr. Orazio. I would prefer and I know our State would prefer that the Federal Government promulgate national standards. That is what we think would be best for both the States and the industry, rather than a hodgepodge of various standards by various States.

Mr. Corcoran. You are familiar with the procedure and you recognize that it is a course of action you could take?

Mr. Orazio. Yes, sir.

TESTIMONY OF ARTURO GANDARA

Mr. Gandara. The procedure itself is unclear. One of the elements that we tried to get clarified by letter for a number of months was in fact whether the preemption would take effect immediately or whether we would have 6 months to apply for a waiver. That procedure is not settled. Right now the proposal includes for a 6-month period. It has been the subject of testimony in which much of the manufacturing community has argued for an immediate preemption.

The other part that is unclear about the procedure is that for the State to prevail, that is, to be granted a waiver, the manufacturers would have to allude on the issue of whether there is a burden of interstate commerce.

It is our responsibility to show there is a significant local and State interest. No criteria has been set for that, so we do have some concerns about that particular proposed procedure.

The other elements that concern us is that even if we were to utilize that procedure, if we had to, we would, that it injects a considerable amount of turmoil within a State that has standards, longstanding standards, and that it becomes a subject of considerable disruptiveness and expectations with respect to what the manufacturing community can expect, with respect to what the States can expect, and becomes a speculative subject, both for financing and budgeting at the State legislative level.

Clearly, the proposed legislation which is the subject of this hearing would end all such speculative activity and would allow the States to proceed in the best fashion suitable for the State.

TESTIMONY OF DAVID R. CONOVER

Mr. CONOVER. I had discussions yesterday with 25 of the 50 States, and in those discussions, I discussed this issue with the person responsible in the building code office, or the energy office for the State energy code.

This would cover water heaters, air-conditioners, heat pumps, and furnaces, and I posed the question: If the proposed "no standards" rule went into effect, would you petition or would you undertake a petitioning? Twenty-one States of the 25 said yes, they would. Three said no. One said they could not answer and would have to talk to the Governor.

A revelation occurred to me in discussing this with the States. Where a State legislature enacted an energy code for new buildings in the legislation or through regulation, required an energy office or building code commission to develop through public hearings a building code, and those States, in order to get a petition, they would have to go back through the legislature or through a regulatory process, and in developing the petition, they would ask the people within the State of, for instance, Pennsylvania, what do you think about our petitioning, they would have to go through a regulatory process in developing a petition. Many States said they could not do that in 180 days.

In cases where the State adopted the code, either through legislation or regulation, one concern that was brought out is that if the door were open even to the legislation enacting the code or the regulation, the opponents of the original energy code would open the door further, and the State in opening up for petitions might lose their entire energy code which covers commercial construction and not only equipment efficiency but lighting, water heating, electrical distribution, and thermal energy.

This was a major concern, and the States rightly so are concerned that in opening the door, they might lose the whole thing.

Mr. CORCORAN. Because the legislature might change its mind?

Mr. CONOVER. That is correct.

Mr. OTTINGER. Would the gentleman yield?

Mr. CORCORAN. That is an implied criticism of the democratic process. Are you frightened by the democratic process?

Mr. CONOVER. I am not frightened one way or the other. I am trying to relate conversations with 25 States.

Mr. CORCORAN. You mean States with whom you spoke are concerned about their programs?

Mr. CONOVER. That is correct.

Mr. CORCORAN. We had that same phenomenon here in Washington.

I yield to the chairman.

Mr. OTTINGER. There are a couple of concerns here, and one is that the language of the preemption in the statute indicates that all energy efficiency standards would be preempted and therefore all the standards for all purposes in all States would be wiped out by this preemption language, and indeed, that is the interpretation that I have been given by our counsel.

In processing the State exemptions, the administration has asked for no money in the budget for next year, and therefore, could not handle the preemptions.

The office presently, I am told, has one secretary and three engineers working on appliances, so that there is apparently no anticipation on the part of the Department that they are going to process any applications for State exemption.

I would like to get the witnesses' opinions with respect to how this will affect the States, if indeed all the appliance efficiency standards are wiped out. Will that cause grave problems to the States?

Go ahead, and then I will be glad to yield to the gentleman from California.

Mr. GANDARA. While the legislature has directed the Energy Commission to set standards, we have the responsibility to set the standards themselves.

The standards that we have would be preempted and we are most seriously concerned about the effect on our responsibilities in forecasting and siting of powerplants.

We have to publish the official State forecast. Furthermore, we are constrained by statute not to approve any application for a powerplant unless the necessity for that powerplant is shown by a demand conformance with the forecast.

We require the utilities to submit their service area's forecast every 2 years with a quantification of the expected conservation. In the PG&E territory, to use an example, their current submittal to us indicates that for a combination of mandatory standards of both buildings and appliances, they are projecting a demand reduction of 5,000 megawatts. by the year 2002. Five thousand megawatts translates to a substantial amount of investment with consequences for resource management, stockholders of the company, and the ratepayers. For us it is also of significance in that it also reduces some considerable environmental problems. We therefore, do have significant interest at stake.

We do believe that as we get all our submittals for this year, that we will see substantial conservation being taken into account. We have projected in our biennial Report that 8,300 gigawatt-hours will be saved by the appliance efficiency standards in place right now. Those gigawatt-hours translate into considerable demand reduction. That is our interest at stake.

Mr. **Conover**. The majority of States have adopted the standard or code language of the ASHRAE standard 9075 or the updated 90(a). This was a requirement of the same law that established the minimum efficiency standards.

The majority of the States would like to keep and want to keep the energy criteria they have for minimum efficiency in their building codes and standards, and are very concerned about the petitioning process and feel again, since the majority of the States use the ASHRAE standards, it would create an overly burdensome process the States would have to go through.

Mr. **Orazio**. In my answer to Congressman Corcoran's questions, I have no doubt that the legislature of New York State, which is bipartisan, would support continuation of standards, and the votes for implementation for these standards was overwhelming in the years that we passed them in a bipartisan manner, and we did without hope or expectation that the Federal Government would ever come up with such standards, so I have no doubt that the legislature would support such standards. New York State is a northeastern State very heavily dependent on imported oil, and although we consume less than half the national average with respect to energy, we still are one of the high-cost States for what we have to pay for energy. Some of our communities downstate are paying for electricity twice the national average.

It is extremely important to us to do everything we can to encourage conservation, and I shudder to think, with the ASHRAE on energy building codes requirements, what would happen if that was thrown out, and I would like to know how far does this preemption go? Does that mean that my village of the town of North Hempstead, which under current State law is permitted to implement certain planning and zoning requirements with respect to energy efficiency, could no longer do that? Does it mean that the entire State would be preempted from any requirement of any kind for any locality to encourage a builder to build a home in a conservative manner? I would be scared to death to think that such preemption would go that far. I would oppose it.

TESTIMONY OF ELGIE HOLSTEIN

Mr. **Holstein**. You are hearing a unanimous State response, and that is that the concept of preemption of States in this area sounds simple, but it is not. It is not simple, because nobody knows how extensive this preemption will be.

There are any number of combinations of codes of various kinds ranging all the way from the obvious examples of New York and California and Florida, with its performance-based codes, all the way down to the 40-some States that have simply adopted the ASHRAE standards.

Does the proposed preemption extend to load-management techniques of State-regulated utility programs? Does it extend to other areas of local building codes, for example? All of these things come into question. A related question is what will be the reaction in those States where the simple industry standard itself is preempted?

If it forces those 40-some States to come back to DOE to get permission for that, it might be reasonable to assume that those States might reexamine whether or not they want to go farther than the ASHRAE standards, ending up where they would be fighting for something more stringent than they had before.

As written in the proposed rule, the exemption procedures are not bad as exemption procedures go. The problem is with the process itself. In a sense you are asking States to go into DOE with two strikes against them already. Strike No. 1 is that the Department would already have made a judgment that standards in this area are not justified, and that suggests a prejudice against State activity in this area to begin with.

Second, it must be understood that State and local standards in this area are often enacted pursuant to the States' own planning concerns.

You have heard the California experience where their appliance efficiency standards are integrally related to their entire power planning process. If you go State by State, even locality by locality, you find that the needs and the interests are different, and so what I am suggesting is that the exemption procedure requires States to come in and attempt to communicate to the Department of Energy just what those so-called significant State and local interests are. From the pure standpoint of federalism, you present the dilemma of a State having to go up there and petition the Federal Government for permission to carry on with the program that it felt was justified on the basis of State and local conditions that only it knew best how to define.

Mr. OTTINGER. I will recognize the gentleman from California and advise him that before he came in the room, we received Mr. Corcoran's unanimous consent to put in your bill, which is described as sterling. Since sterling is falling rapidly, I am not sure it is the description that you really want. We also left open in the record an opportunity for you to give an opening statement.

Mr. CORCORAN. Will the gentleman yield? One of the consequences of inflation is that a lot of things are going down.

[Mr. Moorhead's prepared statement follows:]

STATEMENT OF THE HONORABLE CARLOS J. MOORHEAD
BEFORE THE SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER
HEARING ON APPLIANCE ENERGY EFFICIENCY STANDARDS

MAY 21, 1982

UNDER THE ENERGY POLICY AND CONSERVATION ACT (ECPA), AS AMENDED BY THE NATIONAL ENERGY CONSERVATION POLICY ACT (NECPA), CONGRESS CLEARLY DIRECTED THAT THE SECRETARY WAS NOT TO PRESCRIBE ANY STANDARDS FOR COVERED PRODUCTS IF THE SECRETARY DETERMINES THAT SUCH STANDARD "WILL NOT RESULT IN SIGNIFICANT CONSERVATION OF ENERGY OR THAT THE ESTABLISHMENT OF SUCH STANDARD IS NOT TECHNICALLY FEASIBLE OR ECONOMICALLY JUSTIFIED." CONGRESS CLEARLY MANDATED THAT IN SUCH CIRCUMSTANCES A "NO STANDARD" STANDARD NOT ONLY COULD BE PRESCRIBED, BUT IN FACT SHOULD BE PRESCRIBED. THUS, THE BASIS IN THE LAW FOR THE SECRETARY'S ACTION IS CLEAR.

AS I BELIEVE THE TESTIMONY TODAY WILL REVEAL, THE FREE MARKET HAS FORCED THE APPLIANCE INDUSTRY TO MAKE GREAT PROGRESS IN IMPROVING THE ENERGY EFFICIENCY OF THEIR PRODUCTS. THROUGH THE LABELLING PROGRAM, CONSUMERS HAVE THE OPPORTUNITY TO CHOOSE WHICH APPLIANCE WILL BE THE MOST COST-EFFECTIVE FOR THEM, AND THE STATISTICS PROVE THAT ENERGY EFFICIENCY IS AN IMPORTANT FACTOR IN THAT CHOICE. THE APPLIANCE MANUFACTURERS HAVE RESPONDED AND WILL CONTINUE TO RESPOND TO THESE MARKET FORCES BY PRODUCING MORE ENERGY EFFICIENT PRODUCTS. IN LIGHT OF THIS, THE DEPARTMENT OF ENERGY ACCURATELY CONCLUDED THAT

ANY MANDATORY ENERGY EFFICIENCY STANDARDS WHICH THEY MIGHT PROMULGATE WOULD HAVE A NEGLIGIBLE EFFECT ON IMPROVING ENERGY PERFORMANCE FOR THE COVERED PRODUCTS, AND MAY INDEED HINDER THE APPLIANCE INDUSTRY FROM MAKING FURTHER PROGRESS IN THIS AREA BY STIFLING INNOVATION.

ADDITIONALLY, ANY ATTEMPT TO FEDERALLY MANDATE APPLIANCE EFFICIENCY STANDARDS WOULD BE UNFAIR TO THE CONSUMER. MANY MIDDLE CLASS AND POORER AMERICANS MUST BY NECESSITY CHOOSE A LOWER-COST, LESS ENERGY-EFFICIENT PRODUCT FOR THEIR HOME. FOR THOSE AMERICANS, IT MIGHT BE A CHOICE BETWEEN A LESS ENERGY-EFFICIENT AIR CONDITIONER, FOR EXAMPLE, OR NO AIR CONDITIONER. FURTHERMORE, IF THIS INDIVIDUAL LIVES IN WISCONSIN OR NEW YORK, HE MIGHT USE THAT AIR CONDITIONER ONE-FIFTEENTH OF THE TIME THAT A RESIDENT IN TEXAS OR FLORIDA WOULD USE AN AIR CONDITIONER, AND OBVIOUSLY, THE AIR CONDITIONER THAT IS COST-EFFECTIVE FOR THE NEW YORKER MAY WELL BE LESS ENERGY EFFICIENT THAN ONE THAT IS COST-EFFECTIVE FOR A FLORIDIAN. WHY SHOULD THE POOR OR MIDDLE CLASS INDIVIDUAL IN NEW YORK BE PRICED OUT OF THE AIR CONDITIONER MARKET BY A FEDERAL STANDARD WHICH APPLIES EQUALLY TO AIR-CONDITIONERS SOLD IN NEW YORK AS WELL AS FLORIDA?

IT HAS BEEN SAID THAT THE DOE'S "NO STANDARD" STANDARD IS CONTRARY TO "NEW FEDERALISM" BECAUSE THIS STANDARD PRE-EMPTS STATE STANDARDS. IF THERE IS A TRUE CONCERN FOR "NEW FEDERALISM", THE ANSWER IS NOT TO SUPPORT THE REPEAL OF ONLY THE PRE-EMPTION EFFECT OF FEDERAL STANDARDS. THE ANSWER IS TO SUPPORT MY BILL, H.R. 5497, THE "ENERGY CONSUMER'S REGULATORY REFORM ACT," WHICH NOT ONLY GETS RID OF PRE-EMPTION, BUT MORE IMPORTANTLY REMOVES THE FEDERAL GOVERNMENT ENTIRELY FROM THE WHOLE NEEDLESS, BURDENSOME, AND EXPENSIVE PROCESS OF REGULATING APPLIANCE ENERGY EFFICIENCY.

Mr. **Moorhead**. As I have heard the testimony here this morning, the thing that has been complained about the most is the preemption, and you understand that my legislation would do away with the preemption.

Mr. **Ottinger**. Your legislation would do away with everything.

Mr. **Moorhead**. That is correct, as far as the Federal involvement is concerned, and that is what we would like to do and leave it up to the States, where they have a myriad of climate conditions and where the needs of the appliance users are different from one to another.

In a cold climate, they have to use a lot of heat and need a different standard for their heating equipment than where they have a very mild climate, and the same thing is true on air conditioners, and in the northern areas where it is very cold, cool in the summer even, they do not need the same standards that may be needed in Florida.

In our State of California, our witness will tell you how many different climate areas there are present in the one State of California.

I did have a few questions that I would like to ask.

Mr. **Ottinger**. Would the gentleman yield before that?

Mr. **Moorhead**. Be happy to.

Mr. **Ottinger**. I would like to point out that when the Department of Energy, who will be before us shortly, commented on your legislation, they did so favorably, but with reservations about the appliance standards proposal. They are concerned that the efficiency standards would be eliminated, as would sections dealing with consumer education programs, as well as the DOE and FTC enforcement provisions which they felt should be continued. Specifically, the Department states:

> While the Department agrees energy efficiency standards for appliances should be eliminated and the consumer education programs should be eliminated, it supports continuation of the appliance labeling program. This program by providing information to the consumers on the efficiency and operating cost of appliances assists the function of the free market. The bill, however, would effectively eliminate the labeling program by striking sections of EPCA which contain enforcement provisions for the standards program and for the labeling program, and also the bill would repeal the section that permits the Government to obtain information necessary for the labeling program.

Mr. **Moorhead**. I would like to get a hearing on our bill and perhaps get it to markup, so that if there are corrections and amendments that the majority would like to make in it, they can be made, and we could come out with a piece of legislation that meets the basic needs of the people of this country, and we do away with preemption that all of our witnesses have been complaining about here and let the States have a right to adopt what legislation they need in their own States where they are most effective, and where they know better the needs of the people of their States than we do back here in Washington.

Mr. **Ottinger**. The gentleman is recognized.

Mr. **Moorhead**. Thank you.

I have a question for Mr. Gandara from California.

California has a very active energy commission, and they have done a good job out there, I would like to say. Is it not true that as a part of your residential building standards program that you identified 16 different climate regions within the State?

Mr. Gandara. Yes, sir, we did so at the request of many participants, including the building industry. The new residential building standards set an energy budget for each budget zone. We were required to set a performance standard by the legislature.

This approach resulted because the same conservation measures would have different effects in different climate zones. So it was a way to minimize the costs to the consumer by adjusting the building requirements to the particular climate zone.

Everybody involved in the process had a desire and asked the commission to minimize the cost to the consumer.

Mr. Moorhead. Would you say that did a better job to make the efficiency standards cost effective for everyone in the State?

Mr. Gandara. Yes, it did. For example, in the climate zones for the city of San Diego, under the new residential building standards, a home will now consume only 25 percent of a home built prior to 1977, at an increased cost of only $584.

Mr. Moorhead. Do you think there is any way that Federal standards could ever take into consideration 16 different climate areas of the Union, and come up with climate standards that would be effective for all?

Mr. Gandara. The zones in the State of California encompass the low deserts to the alpine zones, so if the Federal Government were interested, it could do so, yes.

Mr. Moorhead. You are not deceived into thinking that it would, though, are you?

Mr. Gandara. Given the history of BEPS, and the appliance efficiency standards, I probably think that it would not. The capability exists. It is a question of will.

Mr. Moorhead. You decided on your standard levels for 1985, I understand, from a letter you wrote.

Mr. Gandara. I saw that particular reference in the testimony by ARI. It could not be referring to a letter by me. I am not aware of any such letter.

The commission has currently no programs under way for revisions of standards. It has identified additional achievable conservation that could be achieved and potentially achievable conservation in several areas. I would enjoy and would be very interested in reviewing such a letter, because ARI complains that there have been no hearings set and so forth. They implied that new standards had been decided upon. First of all, that process is not underway to the best of my knowledge. Second, to set a standard we are required to to hold extensive hearings to established commercial availability, to make a funding that the standard will not result in an increased cost to the consumer over the lifetime of the product and to find that there will be significant energy savings. So the implication of that particular reference is a bit mystifying to me.

Mr. Moorhead. I heard that there was such a letter, and that is why I am giving you a chance to answer.

Mr. Gandara. I would love to see it. I am not aware of it.

Mr. Moorhead. Would California consider adopting a performance-based standard in lieu of efficiency standards?

Mr. **Gandara**. We are required by the legislation to do so. We were directed to issue not only performance-based standards but prescriptive standards. That particular dual requirement was the request of the California Building Industries Association that wanted the freedom and flexibility to be able to meet the performance standard whichever way it chose. So the building industry in California has the option right now. If they wish to do it by recipe, to use a prescriptive standard, they can do so. If they or wish to do it by a performance standard, they can stand the house on edge, if they like, as long as it meets the energy budget.

Mr. **Moorhead**. If the Department of Energy adopted the standard suggested in the May 14, 1982, GAO study, would California still want to be, want to petition the DOE for an exemption?

Mr. **Gandara**. Yes, the commission made a decision to defend its standards in its 1981 Biennial Report, the official commission policy statement. The Commission noted that it was concerned about the DOE direction and the decreasing levels set at every issuance of the proposed appliance efficiency standards.

Our standards are cost effective and do save energy, and the latest proposed standards by GAO are still below the California standard, so we would petition, yes.

Mr. **Moorhead**. From the testimony I have heard from each of you basically, I get the opinion that you would just as soon that the Federal Government was not setting these standards, and that you were able to set them yourself.

Mr. **Gandara**. If the level of the standards were a good one; California has a significant interest in standards being in existence in adjoining States. If the level of standard is beneath what we feel is appropriate for our State, we certainly believe that we should be free to set our own. The reason we would have an interest, in a national standard is that one of the other elements that we have to take into consideration in our forecasting process, and in our deliberations regarding demand conformance is out-of-State power purchases.

If an adjacent State were not to have standards, then appliances in that State may result in a high peak load demand. When you have coincident peak loads across adjoining States, you do not have as much availability of exchange power. As a result, we feel that conservation in adjoining areas is most essential for California's planning purposes.

We have a concern as well that the reserve margins be kept fairly low. It reduces the powerplant capacity expansion that is required. As a result you have lower rates and less cost to the stockholders of those companies.

Mr. **Moorhead**. Assemblyman Orazio, I had a question for you. Does not the New York State Assembly bill 8304-A provide for authority for the New York State Energy Office to petition DOE for an exemption from preemptions?

Mr. **Orazio**. We might prefer not to have national standards.

I think certain appliance standards are more effectively dealt with respect to the impact on the industry with national standards—air-conditioners, for example, hot water heaters, and so forth—and when you get down to the issue of building standards with the unique geographic conditions in a particular State, they might conceivably require variations, even there—although not as essential from the point of view of the impact on the industry—even there, there can be national standards, and the implication before when you came up with that number of 16 climate zones in California is that if you had to have national standards, you would have to have 16 times 50, which is 800 different numbers for an ASHRAE——

Mr. **Moorhead.** I didn't know that there would be that many.

Mr. **Orazio.** Those climate zones are duplicated in other States, and you might really only have 16 numbers to worry about, so, as Mr. Gandara said, it would not be totally unreasonable for the Federal Government to establish standards, even for building codes.

Mr. **Moorhead.** Do you know why the New York legislation called back the room air-conditioner standards?

Mr. **Orazio.** We, in all our legislation, never felt that last year's bill is the last word, and we were trying to accommodate the growth of the industry in trying to build these higher efficiency standards.

There were some problems associated with certain kinds of window-type air-conditioners that requires that we postpone the higher standard, EER, for several years and give the energy, the State energy office the decision after 1982 for increasing the number as seemed appropriate.

Mr. **Moorhead.** The Governor has now introduced legislation to repeal the 1984 central air-conditioner standards, has he not?

Mr. **Orazio.** That bill has not been introduced as far as I know, not in our house, anyway.

Mr. **Moorhead.** He is supporting such a proposal, is he not?

Mr. **Orazio.** We have not introduced it in our house.

Mr. **Moorhead.** It has been in the other house.

Mr. **Orazio.** I am not sure whether Mr. Volcker has introduced it or not.

It will not be moved; that is the question. It is a dead issue.

Mr. **Moorhead.** I want to thank each one of you, and I yield back the balance of my time.

Mr. **Ottinger.** If this "no standard" standard persists, do you support H.R. 6202, eliminating the preemption, and if you had your druthers, would you support Federal standards?

Mr. **Gandara.** As I indicated earlier, it depends on the level of the standard. If it is equivalent to our standard, we would support it enthusiastically.

If, on the other hand, the "no standard" standard continues to final issuance, then we also support the preemption issue the way you have dealt with it in H.R. 6202.

Mr. **Ottinger.** Mr. Conover?

Mr. **Conover.** Based on the response I received from the States in their desire to maintain the energy codes and standards, they have without going through a lengthy and burdensome petition process, it infers a support for H.R. 6202.

I would suggest, as far as the standards and what DOE should do, a suggestion is, since the majority of States have adopted the ASHRAE standards, and there are provisions for increasing the minimum numbers or minimum efficiencies in those standards right now. If Circular A-119 becomes a final circular, which suggests that the Federal agencies use voluntary consensus standards and participate in the voluntary standards procedures, I contend that the States would want to maintain ASHRAE, and DOE would become more involved in the ASHRAE process.

Mr. **ORAZIO**. I am opposed to the promulgation of nonstandards, and we have in my testimony proposed not only that the Department issue minimum standards, but also a second tier of standards that States might adopt if they felt it necessary, without having the problem of multiplicity of requests for waivers.

In relation to H.R. 6202, I am definitely in support.

I would suggest that the bill include criteria for strong energy-efficiency standards, and that we determine methods or specific methods in such legislation for determining the standards, so that the department would not be able to set such standards at inconsequential levels.

The legislation in and of itself——

Mr. **OTTINGER**. H.R. 6202 just eliminates it.

Mr. **ORAZIO**. Correct.

Mr. **OTTINGER**. If we were to revise the basic law, we ought to provide better criteria in that law?

Mr. **ORAZIO**. Correct.

Mr. **OTTINGER**. Mr. Holstein?

Mr. **HOLSTEIN**. If the "no standard" standard does go forward, we would certainly support H.R. 6202. With regard to the need for Federal standards, I would say that the National Conference of State Legislatures would support reasonable Federal standards subject to the qualifications outlined by Assemblyman Orazio with respect to reasonable State standards.

I believe that there is room for both, that this scare talk about 50 different sets of State standards is just that, and that a reasonable and not onerous system can be developed on the basis of a true working partnership.

Mr. **OTTINGER**. Our good counsel who did a splendid job in setting up these hearings, and has worked very diligently on this, has two questions.

Ms. **FREEMAN**. I just wanted to ask a brief question of the States of New York and California. With respect to California, since the institution of the State program in California, has there been any manufacturer which has dropped out of the California market since 1978?

Mr. **GANDARA**. It has not been brought to my knowledge, nor am I aware of, any manufacturer that is out of the market as a result of the standard.

Ms. **FREEMAN**. Do you anticipate any manufacturers dropping out?

Mr. **ORAZIO**. None that I have heard of.

Ms. **FREEMAN**. You may have noted in ARI's testimony their references to the situation in the States of California and New York.

Mr. **GANDARA**. What was the reference?

Ms. **FREEMAN**. The ARI testimony.

Mr. **GANDARA**. I did read the testimony. As I mentioned earlier, there was this misstatement; there was some misunderstanding or at least some misinformation regarding proposed 1985 standards.

There was some other element of that particular testimony that indicated, at least with respect to the State of California, that choices were reduced.

We have a certified directory of our appliances by categories, which is quite voluminous, and so with respect to that type of information, we have that available, and we did not see any reduction of choices to the consumer.

Ms. **Freeman**. Thank you.

Mr. **Orazio**. What was the comment with respect to New York?

Mr. **Ottinger** [reading]:

> New York is another example. The New York Legislature passed a law last year enacting minimum standards for central air-conditioners and heat pumps. For large portions of the State, these standards are so high that purchases will in many instances never recover the cost differential through energy savings.
>
> We asked the legislature not to enact the standards, but to allow the New York State Energy Office to consider the issue to determine what would be cost effective for consumers in the State. We were told that this could not be done because the legislature was not confident of the capabilities of the New York State Energy Office.

Mr. **Orazio**. That is a little bit of an exaggeration.

Mr. **Ottinger** [continues reading]:

> The same legislation in New York which enacted the central air-conditioner standards also rolled back previously established standards for room air conditioners because the room air standards that had been established were too high. It is estimated that the New York room air conditioner standards cost New York up to $4 million in lost sales tax revenue, and retailers lost sales revenue of $45 million, so that New York could realize $2.4 million in energy savings. Parenthetically, I would note that New York has reacted to the Federal preemption by instructing in this same legislation the NYSEO to petition DOE for an exemption.

Mr. **Orazio**. I would like to know where ARI got the figures as to what it has cost the State, or what it would potentially cost the State in building new plants.

The numbers are astronomical as far as what it costs us to build new plants in New York State, and just—we made some quick calculations yesterday—just going from a number of 7 EER to 8 EER saves 360 watts per year—saving of electrical energy.

If you put a cost on those watts, it can become a very serious problem for a State like New York, and that has to be considered as well as the possibility in implementing these standards; there might be a slowdown in sales.

As far as I can see, Battling Bear and Friendly Frost are selling these airconditioners as—efficiency is a principal sales issue in their advertising, and I don't see that as a significant problem.

Mr. **Ottinger**. Well, I thank you very much, Assemblyman, and other members of the panel. You have been very helpful and given very good testimony. We are grateful for your taking the time to be with us.

[Testimony resumes on p. 96.]

[The prepared statements of Mr. Orazio, Mr. Gandara, Mr. Conover, and a resolution submitted by Mr. Holstein follow:]

TESTIMONY OF

ASSEMBLYMAN ANGELO F. ORAZIO

My name is Angelo F. Orazio, and I am a member of the Assembly of the State of New York. I reside at 18 Crescent Lane, Albertson, New York. I am chairman of the Assembly Standing Committee on Energy and am a graduate engineer, with degrees from Rensselaer Polytechnic Institute and Yale University.

Yesterday I testified at the hearings held by the Department of Energy on the Energy Efficiency Program for Consumer Products. At that time, and today, I represented both the Assembly and the National Conference of State Legislatures. I came out strongly against the promulgation of the "non-standards" by the Department. My recommendations to the Department were:

1. The Department of Energy should withdraw its proposed rules that would establish "no standards" and instead should impose energy efficiency standards that would be established at such levels of efficiency that the cost to consumers would be at the minimum life cycle cost.

2. The Department of Energy should also establish a second level of energy efficiency that would be more energy efficient than the mandated minimum standard and could be selected by a state that chooses to require a more stringent standard. By establishing a standard that is determined to not unduly burden interstate commerce all of the conditions would be predetermined for automatic approval of the Department, thereby removing any uncertainty of whether the state standard would be approved.

In the testimony I took a strong position against the non-standards and pointed out in detail the way I believe that the Department misinterpreted the law and the intention of Congress. For your information I have attached a copy of that testimony.

I feel that the intent of Congress was to establish stringent standards of minimum energy efficiency for consumer products in an effort to conserve a maximum possible amount of energy. Having worked successfully towards that goal through legislative efforts in New York State, and feeling it is still a valid goal, our efforts must be two pronged:

1. We must apply strong pressure on the Department of Energy to reject its proposed rules and come out with stringent standards.
2. We must work towards new legislation that will prevent the issuance of non-standards or at least will not prohibit the individual states from establishing their own standards. I have long been in favor of unified standards of energy efficiency, and would prefer National standards, but if they cannot be had I would at least want the states to have the power to enact standards of their own.

At this time I would like to comment on the proposed legislation, H.R. 6202. The law presently requires that if the state prescribes a standard for a project that already has a Federal standard (or "non-standard") the state must, if it wants to retain the state standards, apply to the Department for a rule that such state standards not be superseded.

The Department then has the power to reject any state petition, and we have no way of knowing how the DOE would decide on any such petitions. As long as we have a Department that sees no justification in energy efficiency standards we can expect that most state petitions would be rejected.

I, therefore, support this legislation to remove pre-emption of state standards. Passage of this bill would be a confirmation of the rights of states to control their own futures, a principle that has been so avidly supported by the current administration.

A problem still remains that, even if this legislation is passed, and if the non-standards are confirmed, many parts of the country would have no minimum standards.

I suggest that the Congress again mandate the issuance of minimum standards, but change the law to be much more specific in the demand for standards and the criteria to be followed in the establishment of the standards. In New York State, when we faced the same decisions we carefully considered the needs of the state, the effect on commerce and industry, and the life cycle cost of the more efficient products to the consumers.

After taking those factors into consideration we went ahead and established standards that have the actual numbers in them. It would be difficult for Congress to be specific on efficiency standards for the broad range of consumer products that are in mind, but I feel you could be very specific on the criteria that are to be followed in establishing the actual numbers for the standards. You could tie the criteria to life cycle costs, to numbers of conforming and non-conforming products available on the market, and the effect that a standard would have on marginal manufacturers. The criteria for establishing the standards should leave nothing to judgement on the part of the Department.

The need of the Nation in relation to conservation of energy are still clear to some of us, despite the temporary "oil glut." I urge the Committee to continue to support strong energy conservation legislation and design a bill that cannot be subverted by misinterpretations.

TESTIMONY OF ASSEMBLYMAN ANGELO F. ORAZIO BEFORE THE
DEPARTMENT OF ENERGY, MAY 20, 1982

My purpose in testifying today is to explain the background of the laws that have been enacted in New York State relating to our energy efficiency program for consumer products, to comment on the proposed rule, and to suggest ways that the Department of Energy can assist the states in the conservation of energy.

New York State, like the vast majority of states, produces much less energy than it uses. Our only significant source of energy is the hydro-electric power that is generated at Niagara Falls, along the St. Lawrence River, and in the Adirondack Mountains. That power represents about 7% of the energy we use. The remainder is imported, with 51% coming from other states and 42% coming from foreign countries.

New York State has long recognized the need to develop its natural resources. The Power Authority of the State of New York was created in 1939 when it was cheaper to generate electricity from oil than from "free" water. That was an era when oil lobbyists opposed hydro-electric power and demanded import quotas to keep out low cost Arabian oil. Last year we passed legislation that encourages small hydro-electric generation by means of regulatory advantages. That legislation not only carries out the provisons of the Public Utilities Regulatory Policies Act of 1978 but also requires that regulated utilities purchase power from a small hydro generator at a price no less than 6 cents per kilowatt-hour, the approximate present avoided cost in New York State. We expect this minimum price to increases as electric rates rise, but meanwhile it will encourage the financing of small hydro projects.

In 1975, the Legislature created the New York State Energy Research and Development Authority to carry out research on alternate forms of energy and conservation. With the authority to issue bonds, and receiving income from taxes on electricity and gas sold within the state, and augmenting those sources with matching grants from industry, colleges, and federal and state governments, NYSERDA spends approximately 200 million dollars a year on energy research and development projects. Great care is exercised to ensure the cost effectiveness of the research effort.

In 1976 the Legislature created one of the first state energy offices to provide one unified agency that would oversee all the day-to-day energy conservation efforts of the state. The State Energy Office has created a State Energy Master Plan which is used as the basis for establishment of need for any new large electric generation plants. This Plan has taken into consideration the conservation that is to be expected from the appliance standards that have been imposed by our State legislature. With grants from the Federal government and other sources the State Energy Office was spending about 13 million dollars a year. Recent Federal cuts have reduced this to about 5 million dollars.

Although we are continually trying to conserve more energy, New York State is already one of the most energy efficient states in the Union. We use 32% less gasoline per person, we use 11% less home heating energy per person per degree-day, and we use 58% less energy per person in industry, than the average of the rest of the country.

For many years New York State has viewed conservation of energy used by consumer products as an essential part of our conservation effort. Immediately after the 1973 Arab oil boycott our Public Service Commission's research department prepared several energy conservation studies, one of them analyzing in depth the energy that could be saved with more efficient appliances.

Going forward from that study the Legislature has enacted a number of laws that we feel have saved substantial energy for the people of the state and nation. At the same time we have been careful to assure that these laws only require conservation measures that are cost effective, with reasonable payback times.

In addition to the State Energy Conservation Construction Code, which conforms to the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 90, we have enacted Article 16 (attached as Exhibit 1) of the Energy Law entitled "Energy Efficient Devices." This article establishes minimum standards for electric and gas hot water heaters, central air conditioners and room air conditioners. It also prohibits the sale of television sets with continuous use of electricity to provide an "instant on" feature. It prohibits the sale of refrigerators with continuously operating anti-condensation heaters. It also prohibits the sale of dishwasters without the ability to turn off a heated drying cycle. Article 16 also prohibits almost all gas pilot lights.

In 1981 the New York Legislature enacted energy efficiency standards for residential central air conditioners, following a step-by-step process of study that took several years. First we evaluated standards adopted by other states, whether adopted by legislation or rules and regulations. After finding that several other states had essentially the same efficiency standards we evaluated those minimum efficiency levels in relation to the needs of industry, commerce, consumers and the goals of energy conservation.

We evaluated the many air conditioners listed in the Directory of Certified Air Conditioners published by the Air-Conditioning and Refrigeration Institute and determimned that the minimum efficiency standard of 8.0 British thermal units per watt of electricity was a standard that more than half of all central air conditioners being manufactured at that time would meet.

We conferred with many air conditioner manufacturers to ascertain their feelings about the standards and to determine what problems they might have in meeting the minimum standards. We evaluated their comments regarding engineering and cost trends. We concluded that the manufacturers would have no problems meeting the 8.0 standard and that they would be capable of meeting an efficiency standard of 9.5 by September 1984.

Our discussions with distributors and dealers led us to the conclusion that the marketing chain would similarly have no substantial problems by the standards we were considering.

An analysis of the economic benefits to consumers was much more difficult. Last summer electricity prices ranged from 1 cent per kilowatt-hour in the most northern part of the state near the hydro-electric plants, to 28 cents per kilowatt-hour for a residential customer with a heavy air conditioner load on Long Island. At first, such a wide range of electricity prices would seem to eliminate any chance of calculating payback times for efficiency improvements.

Fortunately, the variation of climate and population distribution within the state came to our rescue. Those parts of the state with the very lowest electric rates require almost no air conditioning as a consequence of the cool climate. The areas around New York City, with the highest population density, coincidentially also have the most persistent hot

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weather and the highest electricity rates. The two thirds of the state population in and around New York City all pay between 12 and 14 cents per kilowatt-hour. We calculated payback times of about 1 year for a customer purchasing an air conditioner with the minimum seasonal energy efficiency ratio of 8.0, compared to a customer purchasing one of the then average efficiency.

We then evaluated whether there would be an improvement in shipment weighted efficiencies without the existence of efficiency standards. In reviewing data provided by the industry we determined that such efficiencies for central air conditioners shipped in the New York City metropolitan area actually decreased, despite increased costs of electricity during the 1978 to 1980 period that we evaluated. During that period when efficiencies in the metropolitan area decreased by 1.5% the national shipment-weighted efficiency improved by about 1%. Our conclusion was that there would be no significant improvement in central air conditioner efficiencies without the imposition of minimum efficiency standards.

At that point we concluded that the benefits for the people of New York State far outweighed the inconveniences and we developed legislation requiring minimum standards for central air conditioners. This legislation was enacted into law.

I have taken the time to describe these efforts of the New York State Legislature so that you would be able to see for yourselves the extent of our concern for the conservation of energy, as well as our concern for the manufacturers, distributors, and purchasers of consumer products. We have instituted these standards and feel they have been working well in helping New York State to save energy without imposing undue hardships on its businesses and consumers.

Because our greatest efforts in minimum efficiency standards have been in the field of air conditioners (most recently in central air conditioners) I will use those sections of the Notice to make most of my specific comments. To a great extent those comments apply also to the other product sections.

While reviewing the Notice of Proposed Rulemaking and Public Hearings it was apparent that the Department of Energy has gone to considerable effort to evaluate the proposed standards, just as we did for our legislation. We have, however, come to different conclusions. Whereas we determined that minimum efficiency standards for some consumer products would be beneficial to all the people of our state, you have concluded that it would be best to impose no minimum efficiency standards. I believe that this difference can be explained by some of the criteria the Department of Energy used to make its determination.

In determining whether a standard should be imposed the Notice states:

> The first measure for determining significance is the amount of oil and natural gas that would be saved as a result of a standard. (p.26)
>
> DOE is tentatively proposing to establish 10,000 barrels-per-day as the oil (or gas) savings that would be deemed significant if a standard for a particular product would result in such savings, but requests comments from the public on whether a different figure is appropriate, and if so, what it should be. (p. 27)
>
> Support for this general range of savings of oil as "significant" can be found in the history of Congress' rejection of an energy conservation contingency plan for advertising lighting restrictions. That plan was estimated to be able to save only approximately 4,400 barrels of oil per day as a result of reduced electricity usage. (p. 23)

We disagree with your conclusion that 10,000 barrels-per-day of oil is a suitable level to be deemed significant, based on the Congressional determination in that one case. The burden of restricting outdoor advertising is a continuing one, reducing business revenue as long as the restriction is in place. Furthermore, the savings continue only as long as the restrictions are in force. The burdens of consumer product standards are imposed just once, at the time of purchase, but the benefits of enegy conservation continue for the life of the product, long after the cost of the product has been forgotten. Often the cost burden is small, with short payback times. We feel that the savings threshold would more properly be placed at the 1,000 to 4,000 barrels-per-day level.

The DOE, in the Notice, has used a second measurement to determine whether a standard will be of significance:

> DOE is proposing that the energy saved as a result of a standard, as measured on the ORNL Model, be 20% of the energy that would be used by the product in the no-standard base case in order for the savings to be deemed significant. DOE finds support for a 20% level in the former Section 325 of the Act. (p. 34)

This interpretation if the 20% number is a greatly distorted reading of the law, which stated:

> The (energy efficiency improvement) targets prescribed shall be designed so that, if met, the aggregate energy efficiency of covered products of all types which are manufactured in calendar eyar 1980 will exceed the aggregate energy efficiency achieved byproducts of all such types manufactured in calendar year 1972 by a percentage which is the maximum percentage improvement which the Administrator determines is economically and technologically feasible, but which in any case is not less than 20%.

Clearly, the intention of Congress was to establish a target for the aggregate of all consumer products that would represent an energy efficiency improvement for the aggregate of all such products of at least 20%. The law clearly stated that in the event that industry was failing to meet the specified target (as determined by the Administrator) then "the Administrator shall prescribe an energy efficiency standard for such (product) type." DOE's interpretation is in direct contradiction to this requirement in the law that it is claiming as the justification for its "no-standard" determination.

The Administrator was to set the targets at "the maximum percentage improvement which...is economically and technologically feasible..." These tests of economic and technological feasibility can be met by those product levels selected by DOE for evaluation.

The Notice states:

> For all products and classes, DOE believes the efficiency levels analyzed are techologically feasible. (p. 15)

In most cases the DOE economic analysis shows that there are several levels of possible standards that will not only save energy but would also provide lower life cycle costs for the consumer. If one were to set the determination of need for standards by the criteria of the 1975 law, clearly the criteria would be met.

Section 325 of the present law is, however, much more detailed in listing the various factors that should be considered in the determination of whether the establishment of a standard is "economically justified." None of them references the previous legislation or its 20% figure as a factor to be considered and there is, therefore, no justification for using such an arbitrary figure.

In the section of the Notice that addresses the Economic Impact on Manufacturers and Consumers a statement is made:

> To the extent that manufacturers choose voluntarily to make appliance efficiency improvements, their costs and purchase costs to consumers would increase by roughly the same amount as they would if the same improvements were made as a result of standards. (p. 41)

I believe that mandated minimum efficiency standards actually reduce the cost of products. The statement neglects the savings to manufacturers of a reduced product line that is the result of the elimination of energy-wasting products. Equipment, personnel, and assets can be concentrated on the more energy-efficient products, thereby providing the economic advantages of larger production runs.

Similarly, reducing the breadth of the consumer product lines will decrease inventory costs for manufacturers, wholesalers, dealers, and repair parts suppliers. The reduced product lines should benefit especially the small and medium sized businesses by reducing inventory and improving cash flow, thereby reducing their business risk. Such standards would also eliminate unfair competition from manufacturers of cheaper but more inefficient models.

It is important to note that these benefits of reduced product line would be maximized by National energy efficiency standards, and would be proportionately less if only state or regional standards were adopted. This is a strong argument for unified National standards.

In discussing the energy savings of air conditioners and the need of the nation to conserve energy the Notice states:

> Both products (room and central air conditioners) demand electricity during summer periods, contributing to the summer peak demand for electricity. To meet this summer peak demand, utilities install peaking power plants, 65% of which currently use oil or natural gas. As a result, an increase in the efficiency of air conditioners might produce greater savings of oil and natural gas today than increases in the efficiencies of other products. (p. 56)
>
> NECPA's findings and purposes singled out oil and gas as the two energy sources of particular concern and for which the greatest need to save could be inferred. (p. 54)
>
> Where utilities or regions experience difficulty meeting peak demands, the remedies could be more effectively met through State and local actions than through a national program. (p. 57)

Our findings contradict this conclusion. Since almost all energy saved during a summer peak demand period, even though it is being generated by a non-petroleum utility, can be transferred to a utility using oil or gas at peak times, those most precious fuels will be conserved. Whereas one state might not institute efficiency standards for air conditioners to save electricity in another state, such standards, if imposed on a National level, would be effective, would save gas and oil, and would thereby benefit the entire nation.

In evaluating the amount of gas and oil saved by air conditioner standards the Notice uses the average proportion of oil and gas used to generate electricity for the purpose of converting the amount of electricity saved by minimum standards into equivalent barrels of oil.

Our experience leads me to believe that your evaluation should reflect the nearly 100% of oil and gas displacement by efficiency improvements in air conditioners. The cumulative National savings would be close to 15,000 barrels of oil per day if we assume that nearly all air conditioner savings are reflected in conservation of petroleum.

I believe you have misinterpreted Section 327(a)(2) when you made the statement:

> It is DOE's opinion that the preemption of State and local energy efficiency standards by Section 327(a)(2) of the Act would include the preemption of State and local standards that adopted appliance efficiency requirements included in the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 90. Similarly, Section 327(a)(2) of the Act would supersede a State or local efficiency standard requiring intermittent ignition devices on gas burning appliances. (p. 172)

Section 36(a) of the Act, in mandating thermal efficiency standards and insulation requirements for new and renovated buildings has in effect provided minimum energy efficiency standards for components of such buildings and regulations promulgated under Section 325 of the Act can only be used to provide more stringent standards, not weaker ones. Even if the proposed rules were to to supersede the state construction code, states would still need minimum efficiency standards to control the sale of consumer products in the replacement market. Additionally, a state requirement for intermittent ignition devices cannot be superseded since such devices do not meet the definition of "energy efficiency standard" as defined in Section 321(a)(6) of the Act:

> (6)The term "energy efficiency standard" means a performance standard-
> (A) which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under section 323, and
> (B) which includes any other requirements which the Administrator may prescribe under section 325(c).

Clearly, if the requirement for intermittent ignition devices does not have a test procedure it is not an "energy efficiency standard", as defined in the law, therefore it cannot be preempted by Section 327.

The New York State Legislature has stated clearly by means of the laws it has enacted, that it considers the conservation of energy to be one of its highest priorities, and that minimum energy efficiency standards are an integral part of those necessary laws. We would hope that the Federal government has the same view of that need and acts to support the goals of energy conservation and the needs of the states. In order to provide this support we recommend:

1. The Department of Energy should withdraw its proposed rules that would establish "no standards" and instead should impose energy efficiency standards that would be established at such levels of efficiency that the cost to consumers would be at the minimum life cycle cost.

2. The Department of Energy should also establish a second level of energy efficiency that would be more energy efficient than the mandated minimum standard and could be selected by a state that chooses to require a more stringent standard. By establishing an additional standard that is determined to not unduly burden interstate commerce all of the conditions would be predetermined for automatic approval of the Department, thereby removing any uncertainty of whether the state standard would be approved. It is not unusual for the Federal government to establish minimum standards, with the states having the power to establish more stringent standards, for example the Federal safety standards for school buses.

3. In any case, states should not be pre-empted from establishing their own standards if the Federal government fails to do so. (see HR - by Congressman Ottinger)

I believe that strict standards of minimum energy efficiency are in the best interest of the entire nation including consumers, commerce and industry in its benefits. Again, I urge you to withdraw the proposed Rules and impose stringent minimum energy efficiency standards.

TESTIMONY OF
ARTURO GÁNDARA, COMMISSIONER
CALIFORNIA ENERGY COMMISSION

Good Morning. I am Arturo Gándara. I am a Commissioner on the California Energy Commission, and am Presiding Member of the Commission's Appliance Standards Committee. I am here to express my support for H.R. 6202 which would prevent DOE from interfering with existing and future state appliance efficiency programs. We are convinced, based on our experience in adopting and administering standards, that appliance efficiency standards provide positive benefits to both appliance purchasers and utility ratepayers. The California Energy Commission has projected, for example, that by 1985 California's standards will result in annual fuel cost savings to California utilities of around $230 million. Additionally, the standards have obviated the need for some expensive new baseload and peaking power plants because the standards have reduced the rate of growth in electricity demand. Natural gas demand has been similarly affected. The $230 million in annual fuel costs, as well as the capital and operating costs for new power plants would, of course, be passed on to utility ratepayers, most of whom are already stressed by rising energy costs. Further, purchasers of appliances that meet California's standards can expect to save from $180 to $700 over the lifetime of the appliance, depending on the appliance, as compared with appliances that do not meet California's standards.

Among the California Energy Commission's responsibilities is the duty to ensure that the state will have an adequate and reliable supply of electricity. We are meeting that responsibility through forecasting future needs, by adopting or recommending conservation programs to partially meet those needs, and by authorizing the construction of new power plants. As we expressed to this subcommittee in February 1981, conservation programs are our first choice for meeting the State's future needs for five reasons:

First, California's existing programs, such as building, appliance, and load management standards, have worked. Second, we have determined that conservation has a large technical and economic potential for meeting the State's future needs. Implementation of presently identifiable and feasible conservation programs could double our expected electricity savings and triple natural gas savings. Third, conservation represents the best investment for reducing the impact to all Californians of rising oil and gas prices and construction costs. Fourth, conservation is the quickest and most flexible option for meeting future needs. It often takes well over ten years to bring a major power plant on line; conservation begins providing benefits much sooner than that. Furthermore, because of the large increments of power involved with new plants, they cannot be easily adjusted to changes in energy demand. And finally, conservation programs pose far fewer environmental and public safety impacts than almost any other option.

For all of these reasons, we have pursued the development of conservation programs, and their expected savings are a integral component of our energy demand forecasts. Since, by law, the Commission's adopted forecast is the basis for approving new power plants, and since, by law, the Commission may not approve power plants that are not needed as demonstrated by the forecast, the energy savings which we have counted on from our appliance program are vital. California's utilities are counting on the savings from our appliance standards as well. Yesterday, PG&E, one of the nation's largest investor owned utilities, urged DOE to reconsider its proposed rule to establish no standards for appliances. Said PG&E, "[Appliance Standards] have proven their worth, at least in our State, and we want them to remain intact."

Thus, we are appalled by DOE's proposed rule, which can have as its only effect the frustration of California's and other states' efforts to serve their citizens in the manner they think best. It is clear to us that DOE'S proposed rule represents a political and philosophical expression of the Reagan Administration, rather than a good faith effort to carry out the intent of Congress based on sound analysis. Yesterday, I testified to DOE that its analysis was blatantly faulty and its judgments irresponsible. I pointed out that the model used by DOE to predict the energy saving potential of an appliance program was manipulated to undervalue such potential savings. This was accomplished by effectively programming the model to assume a market response in the absence of standards that represents optimistic market behavior theory rather than observed reality. I note that your May 17, 1982, press release reveals that the United States General Accounting Office has independently reached the same conclusion.

I also testified that despite such manipulations the model's predictions in fact are a strong argument on the need for standards. The model predicts that manufacturers will not supply the national market with appliances whose average efficiency meets California's present standards until 1995 in some cases and beyond 2005 in other cases. The model further predicts that manufacturers will never manufacture appliances with an average efficiency that meets DOE's criteria for consumers' lowest life-cycle costs.

And finally, I expressed my incredulity that DOE could dismiss as insignificant the 5.2 Quads of energy savings which its own model attributes to standards. 5.2 Quads exceeds the total 1981 energy consumption of all forms of energy for all uses in any state but California or Texas. There are innumerable permutations in the way to view the significance of 5.2 Quads: such an amount exceeds the entire 1981 energy consumption of New England, not including New York; such an amount of energy would provide all of the energy requirements of the State of Massachusetts for four years, the State of Vermont for 42 years, and so on. From California's perspective, 5.2 Quads would satisfy ALL of California's liquid fuel requirements, for transportation, power production, and industrial processes, and all other uses, for nearly two years. 5.2 Quads of energy equals the energy equivalent of 895 million barrels of oil -- an amount greater than the Congress' goal for the Strategic Petroleum Reserve. Surely Congress cannot have intended DOE to use its discretion to deem such an amount of energy to be insignificant. 5.2 Quads approximates the total output from all of the nation's nuclear electric power plants over the last two years--surely Congress cannot have intended DOE to use its discretion to deem such an amount of energy to be insignificant. 5.2 Quads is obviously a significant amount of energy. Yet, by its proposed rule, DOE is telling Congress that the program Congress directed it to implement will produce only insignificant energy savings.

The absurdity of DOE's conclusions is magnified when you realize that, again by DOE's own analysis, the savings potential of a national standards program could exceed 15 Quads, an amount of energy approximately equal to 500,000 barrels of oil each and every day for 15 years.

We are not comforted in the least by the proposed rule's provision by which California may petition DOE not to have its standards superseded. First, in light of DOE's highly questionable judgments as to the significance of potential energy savings and

THUS THE NATIONAL INTEREST IN STANDARDS, WE ARE CONCERNED ABOUT DOE'S DISCRETIONARY AUTHORITY TO JUDGE CALIFORNIA'S INTEREST IN MAINTAINING STANDARDS. SECOND, DOE HAS NOT REQUESTED ANY FUNDING FOR THE REVIEW OF STATE PETITIONS. THUS WE QUESTION THEIR INTENT OR ABILITY TO REVIEW STATE PETITIONS. AND FINALLY, AS I IMPLIED EARLIER, THE ONLY RATIONAL EXPLANATION FOR DOE'S ACROSS-THE-BOARD "NO-STANDARD" STANDARDS IS THE ACCOMPLISHMENT OF A POLITICAL AGENDA WHICH REJECTS GOVERNMENT REGULATION BASED ON IDEOLOGY RATHER THAN DEMONSTRABLE EFFECTS. IF THIS ASSESSMENT IS CORRECT, DOE IS ACTING PURPOSELY TO WIPE OUT ALL STATE EFFICIENCY STANDARDS, IN WHICH CASE WE CANNOT BE OPTIMISTIC ABOUT THE OUTCOME OF A PETITIONING PROCESS.

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO ADDRESS YOU TODAY. WE URGE YOU TO DISABUSE DOE OF ANY NOTION THAT IT MAY IMPLEMENT NECPA IN SUCH A PERVERSE AND POLITICALLY MOTIVATED MANNER, BY ENSURING THE RAPID PASSAGE OF H.R. 6202.

# # # #

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Before the
U. S. House of Representatives
Energy Conservation & Power Subcommittee

In the Matter of:

Energy Conservation Programs) H.R. 6202
for Consumer Products)

Written Testimony of the NATIONAL CONFERENCE OF STATES ON BUILDING CODES AND STANDARDS, INC.

The National Conference of States on Building Codes and Standards, Inc. (NCSBCS) is a nonprofit corporation whose principle objectives are to foster interstate cooperation and to coordinate intergovernmental reforms in the area of building codes. Formed in 1967, the Conference provides a national forum for discussing issues and concerns on building codes, regulations and public safety. Its voting delegate body is comprised of one representative from each of the fifty states and several territories appointed by their respective governors. In addition states are afforded the opportunity to appoint state members whose expertise lies in varied engineering and administrative disciplines associated with building codes and standards.

Of particular importance to the issue of energy efficiency standards for heating, air conditioning and water heating equipment is our close working relationship with those at the state level who develop and enforce energy codes and standards for new and existing buildings. Through our past efforts in this area, commencing in 1972 when NCSBCS requested the National Bureau of Standards (NBS) develop energy criteria for new building construction, the Conference has gained a formidable understanding of how the states' energy codes are administered and exactly what technology they require. In addition, the NCSBCS Energy Programs Division also provides technical and administrative assistance to the states in maintaining, upgrading and simplifying their energy codes and standards.

Prior to addressing the pre-emption issue on a "states rights" basis, NCSBCS would like to briefly acquaint the Subcommittee with the past history of energy codes and standards and outline exactly where the states are today with their efforts. With this information the Subcommittee should be better equipped to evaluate how the pre-emption issue associated with the appliance efficiency program will affect not only the states, but manufacturers, consumers and utilities within the states.

The past history of energy codes and standards might be summarized as follows:

SEPTEMBER 1972	NCSBCS requests the National Bureau of Standards (NBS) to develop energy criteria for new building construction.
SEPTEMBER 1974	NBS completes the document, returns it to NCSBCS who forwards it to the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) for development as a national consensus standard.
AUGUST 1975	ASHRAE finalizes Standard 90-75 Energy Conservation in New Building Design, which contains, among other things, minimum efficiency provisions for heating, air conditioning and water heating equipment.
DECEMBER 1975	Congress passes the Energy Production and Conservation Act (PL 94-163) providing for states to develop mandatory standards no less stringent than ASHRAE 90-75. The states then formulated their energy conservation plans and began implementing ASHRAE 90-75.
DECEMBER 1977	NCSBCS and the three major model code groups release the Model Code for Energy Conservation in New Building Construction, which provides the technical requirements of ASHRAE Standard 90-75 in enforceable building code language.
JANUARY 1978	States that had not adopted ASHRAE 90-75 or developed their own code began adopting energy codes based on the Model Code for Energy Conservation in New Building Construction.
OCTOBER 1980	ASHRAE completes updates to the technical provisions of Standard 90-75 and releases ASHRAE 90A-1980, which contains increased minimum efficiency levels for heating, air conditioning and water heating equipment.

JANUARY 1981 — The states begin updating their codes to the provisions of the newly-revised ASHRAE standard.

During this time, because of unique energy situations, some states initiated efforts to require different provisions than the nationally-developed ASHRAE standard and Model Code.

The following synopsis outlines where the states currently are regarding heating, air conditioner and water heater minimum efficiency requirements.

WATER HEATERS

- 39 states require water heaters for new/renovated buildings meet the provisions of either ASHRAE 90-75 or 90A-1980.
- 3 states increased the minimum requirements of Standard 90A-1980--
  - 1 from 75% to 76% steady-state efficiency for gas water heaters.
  - 1 from 75% to 80% steady-state efficiency for oil water heaters.
  - 1 to require R-16 insulation on electric water heaters.
- 2 states decreased the minimum requirements of ASHRAE Standard 90A-1980.
- 6 states have no provisions for water heater efficiency.

AIR CONDITIONERS

- 44 states require conformance to either ASHRAE Standard 90-75 or 90A-1980. In some cases the code does not apply to residential construction but applies to small commercial buildings, and would, therefore, be affected by any DOE regulations.
- 4 states require higher minimum efficiencies than those contained in ASHRAE Standard 90A-1980.
- 2 states have no provisions for air conditioner efficiency.

FURNACES

- 46 states require conformance to either ASHRAE Standard 90-75 or 90A-1980. In some cases the code does not apply to residential construction but applies to small commercial buildings, and would, therefore, be affected by any DOE regulations.

- 1 state requires lower minimum efficiencies, 70% steady state, for gas and oil space heaters.
- 3 states have no provisions for furnace efficiency.

It should be pointed out these energy codes and standards apply to new and renovated buildings generally through the building code process.

From this brief accounting of the present state situation, it is obvious the vast majority of states have followed national activities within the voluntary sector. Of those few states increasing the minimum efficiency requirements, all provisions are capable of being met with equipment currently on the market.

Of particular importance to the Subcommittee should be Section 424(b)(3) of NECPA (PL 95-619) which provides preemption not only for the state equipment efficiency provisions just outlined, but for "other requirements respecting energy use or energy efficiency". NCSBCS is concerned this language will be interpreted in a multitude of ways and would, therefore, possibly affect other requirements contained in the states codes and standards. These include--

- requirements for intermittent ignition devices and vent dampers on fossil fuel burning furnaces;
- provisions for outside combustion air for fossil fuel burning furnaces;
- oversizing limitations on heating and air conditioning equipment that assure the equipment size is matched to the peak building load. Elimination of this provision, for instance, could cause increased consumer first costs and operating costs as well as affecting the peak load on electric utilities.
- requirements for "staging" of supplemental electric resistance heating to heat pumps to reduce utility peaking.

In addition to the technical issues associated with preemption of state heating, air conditioner and water heater efficiencies, the Conference respectfully recommends that the Subcommittee address other issues associated with preemption, which might include--

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- The potential for future equipment efficiency decreases in nonowner-occupied structures where first costs of equipment is a primary concern as opposed to annual or life-cycle operating costs. In this case utility costs are payed by others and not of major concern to the equipment purchaser.

- The increased incentive for states to further increase energy code provisions that are not associated with equipment efficiency as a means of achieving the desired goal of energy reduction. This might include, for instance, specifying higher minimum insulation provisions than necessary, or requiring all new residential structures to have active solar systems, as one state is currently considering.

Even though hearings are being conducted today on the Department of Energy's proposed rulemaking (47 Fed Reg 14424, et seq., April 2, 1982) and comments on the NOPR are more appropriate in that forum, I should like to point out a few issues regarding that rule of which the Subcommittee should be aware.

- DOE's "non-issuance" of any regulation on air-to-air heat pumps would not affect state heat pump standards until such time as a rule on heat pumps is proposed by DOE. The "no-standards" rule on central air conditioners and gas/oil furnaces, however, could result in a state having to delete efficiencies and "other requirements" from their codes and standards for those appliances. This would possibly lead to a market inbalance in both equipment and fuel type where states could continue to set efficiencies for heat pumps, but not air conditioners or furnaces.

- The provisions under which DOE would consider state petitions appear to establish an overly excessive and costly process for the states as well as manufacturers. This is further complicated by the "non-issuance" of a heat pump rule in that when the rule is finalized at some point in the future, states would have to petition again and additional hearings would have to be conducted.

NCSBCS further elaborates on these points, and others, in our written response to DOE's proposed rulemaking. A copy of those comments can be made available to the Subcommittee at your request, as can any other data and analyses NCSBCS has concerning state energy codes and standards.

In summation, the past history and present situation regarding the states adoption of energy codes and standards as required by DOE has been successfully undertaken by the states in an essentially uniform manner and is proving to be an effective mechanism to assure new construction is built to minimum standards. Where states have modified their provisions to address specific needs that cannot be collectively addressed in a nationally-uniform standard, they have done so in a manner that recognizes commercial equipment availability.

This leads the Conference to believe, that in the absence of state pre-emption, the majority of states will maintain consistency with future revisions to ASHRAE standards, thereby eliminating major concerns related to state nonuniformity and the need to impose a lengthy and burdensome petition process on each state.

NCSBCS appreciates this opportunity to address the Subcommittee and will be pleased to respond at any time to your further questions.

David R. Conover

APPROVED RESOLUTION OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

FEDERAL PREEMPTION: APPLIANCE EFFICIENCY STANDARDS

WHEREAS, federal preemption of state authority undermines the nation's system of federalism and is unacceptable without a showing of urgent necessity; and

WHEREAS, legal relief is available if a particular state's action unreasonably burdens interstate commerce; and

WHEREAS, appliance efficiency standards have been enforced in most states for many years as part of local and state building codes, without interfering with interstate commerce; and

WHEREAS, proposed federal regulations would preempt state and local authority without demonstrating or attempting to demonstrate the need for such preemption; therefore:

BE IT RESOLVED:

1) that NCSL opposes the proposed federal regulations because they would overturn state and local standards concerning the efficiency or energy use of appliances; and

2) that in the event such regulations are adopted, all reasonable measures should be employed to mitigate their burden on state and local governments, including (a) delay of the effective date of the regulation for a state petitioning for exemption until a final determination is made on the petition, (b) requiring a person who opposes a state's petition to demonstrate that the state's standards would be an undue burden on interestate commerce, and (c) deeming notice in the Federal Register of a state petition as sufficient notice for all concerned parties.

3) Congress should remove the statutory requirement for preemption of all state and local requirements concerning the energy use of appliances.

Mr. Ottinger. We will hear next from Edward Baily, Carrier Corp.; Russell Sasnett, General Electric, representing the Association of Home Appliance Manufacturers; and R. L. Stephens, Lennox Industries, representing the Air Conditioning and Refrigeration Institute [ARI].

Thank you for being with us. Welcome to the subcommittee.

As is our practice, we will put your full statements in the record.

I would like to ask first about the curious history of the industry. It seems to me that in 1980 the industry strongly supported Federal standards on the theory that it would be advantageous to have a national standard.

Indeed, the industry and many of the companies involved worked very hard with the Department in developing satisfactory standards, and there was virtual agreement.

Along comes the Reagan administration and its regulatory philosophy, and the position of the industry shifts to wanting no standards, with the exception of Carrier Corp., and perhaps a few others, and then you get the question of preemption, and I take it you folks now don't want State standards, either.

I would like for you to comment on where the industry stands at this point.

Do you really think that Congress and the States ought to have no interest in energy efficiency; that the marketplace will take care of this matter satisfactorily, despite the fact that half of the appliances are not bought by the end-user? Do you think we ought to interfere with States in this matter?

Mr. Stephens?

STATEMENTS OF R. L. STEPHENS, AIR CONDITIONING AND REFRIGERATION INSTITUTE, ACCOMPANIED BY DAVID A. HUNT, DIRECTOR OF PUBLIC AFFAIRS; RUSSELL SASNETT, ON BEHALF OF THE ASSOCIATION OF HOME APPLIANCE MANUFACTURERS; AND EDWARD BAILY, ON BEHALF OF THE CARRIER CORP.

Mr. Stephens. We have filed a statement with the committee, and I have it summarized very briefly in less than a page, and since I am speaking for several manufacturers, on behalf of ARI, may I read this statement, sir?

Mr. Ottinger. You may.

Mr. Stephens. ARI is opposed to the proposal embodied in H.R. 6202, to delete the Federal preemptive effect of a DOE finding that no standards are justified. Congress, in its enactment of EPCA, as amended by NECPA, specifically provided that a finding by the Department of Energy that no standard was justified for a particular class or type of product would have the same preemptive effect as a minimum standard prescribed by the Department. We agree with this provision in the present law.

We have witnessed on several occasions, attempts by States to enact legislation or promulgate regulations in the name of energy conservation that have resulted in inequities for the citizens of the particular State and hardships on industry. An exception is Florida, which has adopted a building index approach without mandatory statewide minimum standards—they can be used as an option by the builder. In ARI's view, the present Florida program would not be preempted by a DOE finding of no standards are justified.

I would like to make one last point. Under the present statute and the DOE proposed rule, a State can petition DOE to be exempt from a DOE finding of no standards are justified. We believe this adequately protects State interests in this area.

In conclusion, we oppose H.R. 6202 and urge this subcommittee to reject this approach.

[Testimony resumes on p. 105.]

[Mr. Stephens' prepared statement follows:]

STATEMENT
OF THE
AIR-CONDITIONING AND REFRIGERATION INSTITUTE
TO THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER
U.S. HOUSE OF REPRESENTATIVES
MAY 21, 1982

MY NAME IS R.L. STEPHENS. I AM VICE PRESIDENT OF LENNOX INDUSTRIES. TODAY I AM SPEAKING ON BEHALF OF THE MEMBERS OF THE AIR-CONDITIONING AND REFRIGERATION INSTITUTE (ARI). WE APPRECIATE THIS OPPORTUNITY TO PRESENT OUR VIEWS ON THE ISSUE OF FEDERAL PREEMPTION OF STATE APPLIANCE ENERGY EFFICIENCY STANDARDS.

ATTACHED TO MY STATEMENT IS A COPY OF ARI'S TESTIMONY PRESENTED THIS PAST TUESDAY, MAY 18, 1982, AT THE DOE PUBLIC HEARINGS ON THEIR NOPR OF APRIL 2ND. THAT TESTIMONY SETS FORTH IN SOME DETAIL ARI'S VIEWS ON DOE'S PROPOSAL.

ARI IS THE NATIONAL TRADE ASSOCIATION OF MANUFACTURERS OF HEAT PUMPS AND CENTRAL AIR CONDITIONERS AND COMPONENTS INCLUDED IN SUCH EQUIPMENT. ARI MEMBERS MANUFACTURE MORE THAN 90 PERCENT OF THIS EQUIPMENT SOLD IN THE UNITED STATES. CENTRAL AIR CONDITIONERS ARE AN IMPORTANT PRODUCT FOR ARI MEMBERS AND ARE COVERED BY THE DEPARTMENT OF ENERGY'S CURRENT PROPOSED "NO-STANDARD" STANDARD IN THE CONSUMER APPLIANCE PRODUCTS RULEMAKING. HEAT PUMPS ARE NOT COVERED IN THE CURRENT PROPOSED RULE.

A MAJORITY OF ARI COMPANIES SUPPORT THE FINDING BY DOE THAT NO NATIONAL STANDARDS ARE JUSTIFIED FOR CENTRAL AIR CONDITIONING EQUIPMENT AND THAT ALL PRESCRIPTIVE STATE ENERGY EFFICIENCY STANDARDS FOR CENTRAL AIR CONDITIONERS SHOULD BE PREEMPTED. NOT ALL ARI MEMBERS ARE IN COMPLETE AGREEMENT WITH THIS POSITION. ALL MEMBERS HAVE BEEN URGED TO SUBMIT COMMENTS ON THIS ISSUE TO THE COMMITTEE AND THE DEPARTMENT OF ENERGY.

ARI IS OPPOSED TO THE PROPOSAL EMBODIED IN H.R. 6202, TO DELETE THE FEDERAL PREEMPTIVE EFFECT OF A DOE FINDING THAT NO STANDARDS ARE JUSTIFIED. CONGRESS, IN ITS ENACTMENT OF EPCA, AS AMENDED BY NECPA, SPECIFICALLY PROVIDED THAT A FINDING BY THE DEPARTMENT OF ENERGY THAT NO STANDARD WAS JUSTIFIED FOR A PARTICULAR CLASS OR TYPE OF PRODUCT WOULD HAVE THE SAME PREEMPTIVE EFFECT AS A MINIMUM STANDARD PRESCRIBED BY THE DEPARTMENT.

AT THE TIME OF EPCA'S ENACTMENT BY CONGRESS, IT WAS NOT CLEAR WHETHER A NATIONAL ENERGY STANDARD WAS JUSTIFIABLE FOR THE CLASSES OR TYPES OF PRODUCTS ENUMERATED IN EPCA. HOWEVER, CONGRESS DID SPECIFICALLY PROVIDE THAT IF SUCH A NATIONAL STANDARD WAS NOT JUSTIFIABLE, BASED ON EXPLICIT CRITERIA, THEN DOE WOULD NOT BE REQUIRED TO MANDATE ONE. FURTHER, CONGRESS RECOGNIZED THE NEED TO CONSIDER STATE REQUESTS TO HAVE DIFFERENT REQUIREMENTS BY SETTING FORTH IN SECTION 327 A PROCESS TO BE FOLLOWED FOR A STATE TO SEEK AN EXEMPTION FROM THE PREEMPTIVE EFFECT OF A FEDERAL STANDARD (INCLUDING A "NO-STANDARD" STANDARD). THIS PROCESS WAS INCLUDED TO GUARD AGAINST UNREASONABLE STATE REGULATIONS CAUSING INJURY TO THE INDUSTRY TRYING TO DO BUSINESS IN A NATIONAL, INTERSTATE MARKET, AND TO CONSUMER PURCHASERS OF THESE PRODUCTS.

AIR CONDITIONING EQUIPMENT IS PERHAPS THE SINGLE BEST EXAMPLE OF WHY A SINGLE NATIONAL STANDARD IS NOT JUSTIFIABLE. CENTRAL AIR CONDITIONERS ARE USED IN ALL REGIONS OF THE COUNTRY. THEIR USE, HOWEVER, IS HIGHLY DEPENDENT ON CLIMATIC VARIABLES AND THE COST OF ELECTRICITY. ESTABLISHING A SINGLE NATIONAL STANDARD THAT WOULD BE COST EFFECTIVE TO ALL USERS WOULD REQUIRE THAT THE STANDARD BE SET AT A LOWER LEVEL THAN COULD BE JUSTIFIED IN THE HIGH USE REGIONS. SETTING A STANDARD BASED ON A NATIONAL AVERAGE OR, E.G., ON USE CONDITIONS IN THE SUN BELT STATES, WOULD SEVERELY PENALIZE USERS IN NORTHERN CLIMATES AND OTHER LOW COOLING LOAD HOUR REGIONS SUCH AS THE CALIFORNIA COASTLINE.

COOLING LOAD HOURS VARY ANYWHERE FROM 200 HOURS TO 3,000 HOURS PER YEAR. NO SINGLE STANDARD COULD BE COST EFFECTIVE FOR THIS WIDE VARIETY OF USER CONDITIONS. THIS IS NOT TO SAY, ON THE OTHER HAND, HOWEVER, THAT SEPARATE STATE STANDARDS WOULD BE JUSTIFIABLE. CALIFORNIA, AS AN EXAMPLE, HAS IDENTIFIED SIXTEEN DIFFERENT CLIMATE REGIONS WITHIN THE STATE. THE RANGE OF COOLING LOAD HOURS IS AS BROAD IN CALIFORNIA AS WE HAVE FOUND FOR THE ENTIRE UNITED STATES.

WE HAVE WITNESSED ON SEVERAL OCCASSIONS, ATTEMPTS BY STATES TO ENACT LEGISLATION OR PROMULGATE REGULATIONS IN THE NAME OF ENERGY CONSERVATION THAT HAVE RESULTED IN INEQUITIES FOR THE CITIZENS OF THE PARTICULAR STATE AND HARDSHIPS ON INDUSTRY. AS WE STATED ABOVE, CALIFORNIA HAS IDENTIFIED SIXTEEN DIFFERENT CLIMATE REGIONS WITHIN THE STATE AND STILL INSISTS ON STATEWIDE MINIMUM STANDARDS. THE STATE ENERGY COMMISSION HAS ON SEVERAL

OCCASSIONS INTERPRETED FEDERAL TEST PROCEDURES, ESTABLISHED BY THE DEPARTMENT OF ENERGY, ACCORDING TO ITS OWN DESIRES IN SPITE OF SPECIFIC PREEMPTIVE LANGUAGE IN FEDERAL LAW. RECENTLY, WE RECEIVED A COPY OF A LETTER WRITTEN LAST DECEMBER BY A MEMBER OF THE ENERGY COMMISSION SETTING FORTH THE ANTICIPATED NEW MINIMUM STANDARD LEVELS FOR APPLIANCES FOR 1985. NO HEARINGS HAVE BEEN HELD TO DETERMINE WHETHER THESE STANDARD LEVELS ARE ACHIEVABLE, DESIRABLE, COST-EFFECTIVE, OR NECESSARY.

NEW YORK IS ANOTHER EXAMPLE. THE NEW YORK LEGISLATURE PASSED A LAW LAST YEAR ENACTING MINIMUM STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS. FOR LARGE PORTIONS OF THE STATE, THESE STANDARDS ARE SO HIGH THAT PURCHASES WILL IN MANY INSTANCES NEVER RECOVER THE COST DIFFERENTIAL THROUGH ENERGY SAVINGS. WE ASKED THE LEGISLATURE NOT TO ENACT THE STANDARDS, BUT TO ALLOW THE NEW YORK STATE ENERGY OFFICE TO CONSIDER THE ISSUE TO DETERMINE WHAT WOULD BE COST EFFECTIVE FOR CONSUMERS IN THE STATE. WE WERE TOLD THAT THIS COULD NOT BE DONE BECAUSE THE LEGISLATURE WAS NOT CONFIDENT OF THE CAPABILITIES OF THE NEW YORK STATE ENERGY OFFICE.

THE SAME LEGISLATION IN NEW YORK WHICH ENACTED THE CENTRAL AIR CONDITIONER STANDARDS ALSO ROLLED BACK PREVIOUSLY ESTABLISHED STANDARDS FOR ROOM AIR CONDITIONERS BECAUSE THE ROOM AIR STANDARDS THAT HAD BEEN ESTABLISHED WERE TOO HIGH. IT IS ESTIMATED THAT THE NEW YORK ROOM AIR CONDITIONER STANDARDS COST NEW YORK UP TO $4 MILLION IN LOST SALES TAX REVENUE, AND RETAILERS LOST SALES REVENUE OF $45 MILLION, SO THAT NEW YORK COULD REALIZE $2.4 MILLION IN ENERGY SAVINGS.

(PARENTHETICALLY, I WOULD NOTE THAT NEW YORK HAS REACTED TO THE FEDERAL PREEMPTION BY INSTRUCTING IN THIS SAME LEGISLATION THE NYSEO TO PETITION DOE FOR AN EXEMPTION.)

A DIFFERENT EXAMPLE, HOWEVER, COMES FROM THE STATE OF FLORIDA. INDUSTRY WORKED DILLIGENTLY WITH LEGISLATORS AND REGULATORS IN FLORIDA TO DEVELOP A PERFORMANCE BASED BUILDING CODE FOR ENERGY CONSERVATION. THIS CODE HAS BEEN ADOPTED AND ENCOURAGES BUILDERS AND CONTRACTORS TO BUILD ENERGY EFFICIENT HOMES IN THE MOST COST EFFECTIVE MANNER POSSIBLE WITHOUT RESORTING TO THE EXCLUSIVE USE OF MANDATORY MINIMUM ENERGY EFFICIENCY STANDARDS.

ALTHOUGHT THE PRESENT CODE DOES HAVE SOME EQUIPMENT STANDARDS, WE HAVE BEEN ASSURED THAT MODIFICATIONS CAN BE MADE TO ELIMINATE SUCH STANDARDS. THE FLORIDA MODEL ENERGY CODE FOR NEW CONSTRUCTION IS AN EXCELLENT EXAMPLE OF HOW GOVERNMENT AND INDUSTRY CAN WORK TOGETHER TO DEVELOP A RESPONSIBLE APPROACH TO ENERGY CONSERVATION WITHOUT RESORTING TO INEFFICIENT AND WASTEFUL PRESCRIPTIVE STANDARDS PROGRAMS.

IN OUR VIEW, THE FLORIDA PROGRAM DOES NOT HAVE A PREEMPTION PROBLEM AND, THEREFORE, NEED NOT BE VERY CONCERNED WITH THE DOE PROPOSED RULE. I MIGHT ADD, THE FLORIDA APPROACH ALSO ADDRESSES THE ISSUE OF THE BUILDER/CONTRACTOR THIRD PARTY PURCHASE SITUATION FOR APPLIANCES SUCH AS CENTRAL AIR CONDITIONERS, FURNACES, AND WATER HEATERS, BY PROVIDING AN INCENTIVE TO BUILDERS TO PURCHASE THE MOST COST-EFFECTIVE EQUIPMENT FOR THE HOME.

IF OTHER STATES WERE TO ADOPT THE FLORIDA APPROACH, THEN THE FEDERAL PREEMPTION OF STATE PRESCRIPTIVE EFFICIENCY STANDARDS WOULD BECOME A MOOT ISSUE. HOWEVER, IF A STATE STILL DESIRES PRESCRIPTIVE MINIMUM STANDARDS, THEN A FAIR AND REASONABLE PETITIONING PROCESS HAS BEEN PROVIDED FOR BY CONGRESS IN NECPA.

WITH RESPECT TO THE THE DOE PROPOSED RULE, DOE HAS NOT PROPOSED TO ELIMINATE THE PETITIONING PROCESS. IF ANYTHING, THE DOE PROPOSED RULE GOES TOO FAR IN FAVOR OF EASING THE REQUIREMENTS OF THE STATES IN REGARD TO THE PETITIONING PROCESS. DOE HAS PROPOSED THAT NO PREEMPTION WILL TAKE PLACE, FOR THOSE STATES FILING EXEMPTION PETITIONS, UNTIL THE PETITIONS ARE RESOLVED.

ARI DOES NOT BELIEVE THIS IS THE CORRECT INTERPRETATION OF THE PRESENT LAW. HOWEVER, IF THE RULE IS ENACTED AS PROPOSED, THEN NO STATE SEEKING TO RETAIN ITS STANDARDS WOULD BE PREEMPTED UNTIL ITS PETITION IS REVIEWED BY THE DEPARTMENT.

ARI OPPOSES H.R. 6202 BECAUSE IT WOULD REMOVE DOE'S PRESENT AUTHORITY TO DECIDE WHETHER A STATE STANDARD WAS JUSTIFIED. THIS WOULD PLACE THE INDUSTRY IN A POSITION OF DOUBLE JEOPARDY; THAT IS, HAVING TO BE CONCERNED WITH POSSIBLE REGULATION AT BOTH STATE AND FEDERAL LEVELS. IN OUR VIEW, CONGRESS INTENDED THAT THIS NOT BE THE CASE WHEN THE APPLIANCE PROGRAM WAS ENACTED. THERE ARE MANY ADVANTAGES TO HAVING A SINGLE FORUM FROM WHICH TO CONSIDER THE ISSUE OF WHETHER CERTAIN STANDARDS ARE COST EFFECTIVE. CONGRESS RECOGNIZED THIS AND DETERMINED THAT THE SINGLE FORUM SHOULD BE THE DEPARTMENT OF ENERGY. WE DO NOT BELIEVE IT IS WISE TO CHANGE THE RULES IN THE MIDDLE OF THE PROCESS, BEFORE A FINAL RULE IS EVEN PROMULGATED, JUST BECAUSE CONGRESS MAY NOT AGREE WITH THE TENTATIVE CONCLUSION REACHED BY THE DEPARTMENT OF ENERGY AFTER A DETAILED EXAMINATION OF THE RULEMAKING RECORD.

AN ADDITIONAL POINT THAT WE MUST RAISE IS THAT, EVEN IF DOE WERE TO ADOPT STANDARDS AS IS SUGGESTED BY THE MAY 14, 1982 REPORT OF THE GENERAL ACCOUNTING OFFICE, IT IS DOUBTFUL THAT THE SUGGESTED AIR CONDITIONING STANDARDS (RANGING FROM 6.5 SEER TO 7.0 SEER) FOR CENTRAL EQUIPMENT WOULD BE SATISFACTORY FOR THE STATES THAT HAVE ENACTED STANDARDS OF THEIR OWN, SUCH AS CALIFORNIA AND NEW YORK. THEREFORE, THESE STATES WOULD STILL BE LIKELY TO PETITION DOE FOR AN EXEMPTION. WHETHER DOE PROPOSES EQUIPMENT STANDARDS OR A "NO-STANDARD" STANDARD, THE STATES ARE REQUIRED TO PETITION DOE, UNDER THE EXISTING LAW.

THE AIR CONDITIONING INDUSTRY DOES NOT WISH TO BE THREATENED WITH A DUAL REGULATORY BURDEN — STATE AND FEDERAL. ABSENT THE PROTECTION OFFERED BY EFFECTIVE FEDERAL PREEMPTION OF THE STATES IN THIS AREA, THEN WE WOULD URGE THAT THE ENTIRE FEDERAL REGULATORY BURDEN, INCLUDING TEST PROCEDURES, LABELING AND MINIMUM STANDARDS, SHOULD BE REPEALED. THE MOORHEAD BILL, H.R. 5497, IS AN APPROPRIATE STEP IN THIS DIRECTION WHICH ARI PRESENTLY SUPPORTS.

ARI WOULD NOTE THAT OUR INDUSTRY HAS FOR MORE THAN 20 YEARS MAINTAINED OUR OWN TEST PROCEDURES, AND PUBLISHED EQUIPMENT DIRECTORIES AS PART OF OUR INDUSTRY CERTIFICATION PROGRAM. THE TAKEOVER OF THE INDUSTRY'S VOLUNTARY CONCENSUS TEST PROCEDURES BY THE DEPARTMENT OF ENERGY IN THE LATE 1970'S HAS HAD A SERIOUS ADVERSE IMPACT ON OUR MEMBERS AND OUR PROGRAM. ELIMINATION OF THE FEDERAL REGULATORY BURDEN WOULD ALLOW OUR INDUSTRY TO CONCENTRATE ON WORKING WITH THE STATES, AS WE HAVE IN FLORIDA, CONCERNED WITH ENERGY CONSERVATION.

IN ARI'S VIEW, H.R. 6202 IS THE LEAST DESIRABLE OF THE OPTIONS AVAILABLE TO THE CONGRESS. WE OPPOSE THIS LEGISLATION.

THANK YOU. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. OTTINGER. Are you authorized to say anything that is not in the statement?

Mr. STEPHENS. Yes.

Mr. OTTINGER. If the States come in for an exemption from preemption, are you going to oppose it?

Mr. STEPHENS. It would depend, sir, on what the circumstances are surrounding that.

Mr. OTTINGER. You heard the testimony before. If indeed this preemption goes so far as to eliminate the ASHRAE application in the States that have adopted it, interfere with zoning codes, and State public utility commission regulations with respect to energy efficiency, do you still think that preemption is all right?

Did your organization consider that?

Mr. STEPHENS. I am an engineer, not an attorney, but let me make a statement.

We do not believe that the programs put into effect by utilities would be preempted by this "no standard" standard, and as far as ASHRAE is concerned, we believe only the prescriptive part of those standards would be preempted, and certainly if DOE promulgated a standard, that standard would preempt the ASHRAE.

Mr. OTTINGER. I will read you the statute. It says, this part supersedes any State regulation insofar as such State regulation may now or hereafter provide for "(2)"—and I am skipping—"any energy efficiency standard or other requirement with respect to energy efficiency or energy use of a covered product."

Then the next relevant provision is in (b)(1):

> If a State regulation is prescribed which establishes an energy efficiency standard or other requirement respecting energy use or energy efficiency of the type or class of covered product and which is not superseded by subsection (a)(2) or (b)(2), any person subject to such regulation may file the petition.

It describes the petition.

The Secretary has to approve that unless there is no significant State or local interest sufficient to justify such State regulations, and (b), such regulation unduly burdens interstate commerce.

What concerns us is that you can say that any standard, because it will require you to produce different appliances for different States would burden interstate commerce and not be subject to the exemption procedure.

Mr. STEPHENS. Sir, I guess we think the key issue in that would be—Mr. Hunt, my colleague—we think the key issue would be that the purchaser is not required to buy a unit of a certain efficiency level where you have incentive programs by utilities. He is privileged to buy whatever he pleases, but if he wants to participate in the incentive program, he would have to buy the more efficient unit.

I defer to my legal counsel.

Mr. HUNT. I am David A. Hunt, with the Institute.

Our view is that those types of programs adopted by utility commissions and utilities such as in Kansas for our products, where it is a hookup prohibition on equipment less than a specified level, that those programs would be preempted.

It is also our view that what are called incentive programs, where there is an incentive to purchase higher equipment, that does not carry any prohibition on any type of equipment sale in the State and is not preempted.

Mr. OTTINGER. It says any regulation, not prohibition.

Mr. HUNT. It speaks about minimum standards and requirements, and I suppose we could argue the legal point forever. I am simply stating what ARI's view is at this point.

Mr. OTTINGER. What about the California system, where their utility program is based upon the energy efficiency standards, reducing the need for future plants?

Would that be preempted?

Mr. HUNT. In our view, asking me, as a lawyer, I believe what would be preempted is not the building approach and all of that business out there, what would be preempted would be the specific prescriptive minimum standards for appliances and that only, not the rest of their program.

Mr. OTTINGER. We will turn to Mr. Sasnett.

STATEMENT OF RUSSELL SASNETT

Mr. SASNETT. I would like to request, also, to read a 1-page summary of our association's position.

Mr. OTTINGER. It would give us great pleasure.

Mr. SASNETT. The Association of Home Appliance Manufacturers [AHAM] which represents nine of the household appliances covered by the Department of Energy's appliance program, (1) supports the DOE proposed finding that standards are not justified on appliances and (2) does not support H.R. 6202, which would dismantle the carefully constructed preemption provisions of the Energy Policy and Conservation Act as amended by the National Energy Conservation Policy Act.

Sales-weighted data of key AHAM appliances show energy efficiency improvements between 1972 and 1981 of 58.6 percent for refrigerators and refrigerator-freezers, 54.6 percent for freezers, 18.1 percent for room air-conditioners, 45.0 percent for dishwashers, and 58.0 percent for clothes washers. Clearly this confirms energy-efficient appliances are available to consumers and consumers are buying those efficient appliances; and this supports DOE's proposed finding that mandatory Federal standards are not necessary.

After cooperating with four generations of Government conservation programs, we are frankly dismayed that there is under consideration a proposal, H.R. 6202, to change the "rules of the game" again. It is totally unjustified.

Under existing law, a State that believes it needs appliance energy standards because of a "significant State or local interest" can make its case for exemption regardless of whether DOE issues a final rule calling for standards or no standards. DOE must balance the local interest against the burdens on interstate commerce. This is a legitimate Federal function.

Congress recognized the importance of providing a rational forum for balancing the major interests involved and provided for it in the National Energy Conservation Policy Act. It should be preserved.

[Mr. Sasnett's prepared statement follows:]

Testimony by the
Association of Home Appliance Manufacturers
Before the
Subcommittee on Energy Conservation and Power
of the
Committee on Energy and Commerce
May 21, 1982

I am Russell Sasnett, Manager, Regulatory Relations for the General Electric Company. I am representing the Association of Home Appliance Manufacturers (AHAM), of which General Electric is a member along with 63 manufacturers of major and portable appliances.

AHAM represents manufacturers of nine of the household appliances explicitly included in Part B of P.L. 94-163, as amended by P.L. 95-619.

We appreciate the opportunity to present the views of the preponderant majority of AHAM's members regarding the present status of the Department of Energy's (DOE) proposed rulemaking on appliance energy efficiency standards and H.R. 6202.

It will be no surprise to anyone who has followed the DOE appliance program that:

(1) AHAM supports the DOE proposed finding that standards are not justified on appliances; and

(2) AHAM does not support H.R. 6202, which would dismantle the carefully constructed preemption provisions of the Energy Policy and Conservation Act, as amended by National Energy Conservation Policy Act.

DOE's Rulemaking

We will submit, as part of this record, AHAM's comments to the DOE on their rulemaking during the summer of 1980, as well as the comments we presented to DOE this week during their current hearings. We hesitate to burden the Subcommittee's

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budget with the expense of reproducing these voluminous documents but it is important to understand the depth of research, thought and effort that is going into this matter.

And it is not over

DOE has only proposed a rule; a final rule has yet to be promulgated.

It is important to keep in mind the major difference between DOE's 1980 proposed rule and the reproposed rule currently subject to hearings. There are facts now available on whether purchasers of appliances — be they homebuilders or homeowners —consider energy efficiency an important product feature when buying appliances. The answer is a clear affirmative on the products with which AHAM is familiar.

A sales-weighted comparison of the average energy efficiency of key AHAM appliances sold in 1972, versus sales in 1981, reveal the following improvements:

Refrigerators and Refrigerator-Freezers	+58.6%
Freezers	+54.6%
Room Air Conditioners	+18.1%
Dishwashers	+45.0%
Clothes Washers	+58.0%

Clearly: (1) Energy efficient appliances are available now to consumers; and (2) Consumers are buying these more efficient appliances in significant volume.

This supports DOE's proposed finding that mandatory Federal standards are not necessary to achieve the public policy purposes of the law.

H.R. 6202

With regard to H.R. 6202, we would like to review the history of this issue.

Appliance energy conservation was initially addressed by the Nixon Administration when the Department of Commerce sought a voluntary industry commitment to energy labels. Under the Ford Administration, voluntary energy efficiency improvements of up to 20% in products were requested.

Over 90% of the industry responded affirmatively to these requests. Labels were on room air conditioners in mid-1974. Work began to incrementally improve the efficiency of appliance lines. However, Congress passed the Energy Policy and Conservation Act (EPCA) in 1975 which made mandatory that which the industry was doing voluntarily; that is, Federal test procedures and labels were to be instituted and energy conservation targets established. Failure to achieve the targets would result in mandatory standards.

(As a footnote, because this law made it immediately illegal to make energy claims based on any test procedure other than a nonexistent Federal test procedure, appliance manufacturers had to withdraw all energy information and energy labels in use. This, tragically, effectively delayed appliance energy labeling nearly five years.)

Two years after enactment of the EPCA, President Carter introduced a legislative package entitled National Energy Conservation Policy Act (NECPA) which Congress passed in 1978. NECPA struck down the energy conservation targets and put in its place mandatory energy efficiency standards.

AHAM, with reluctance, supported this fourth generation government appliance energy conservation program on the basis that it would include strong Federal preemption provisions. Our concern was clear then, and it is clear now — it is a strong preference for a single, national appliance energy program.

Let me quote from our 1977 statement to this Subcommittee:

> "...You now see most of the industry agreeing to minimums (standards) because they perceive this to be the only way to be assured of, first and most importantly, strong preemption..."

We went on to say:

> "Our industry cannot serve more than one master, and if the Congress does not recognize this hard fact right now no cognizant government authority ever will. The result will be chaos — a jumble of conflicting 'non-tariff barriers' around the respective states, each state competing against the others to see which can be the most protectionist on behalf of its citizens. Our national industry as we know it today will be radically reshaped — surely less efficient, surely less diverse, surely higher priced. We do not think the Constitution contemplates that result. We think U. S. consumers agree with us.
>
> "Partial preemption or ambiguous preemption is of no use to us. The Congressional purpose should be clearly and boldly stated, and the scheme of Federal preemption comprehensively defined in support of a workable national program."

AHAM reiterated this position before the Senate a month later in a statement to the Energy Conservation and Regulation Subcommittee of the Energy and National Resources Committee:

> "The industry's position of supporting the President's proposal for Federal minimum standards is strongly based on having it carry with it strong, clean-cut, readily administerable preemption by Federal law of all overlapping state and local energy conservation and all state and local energy labeling laws.
>
> "If any of the states have a unique reason to have separate and different laws, the burden should be on that state to demonstrate that there is such a need, that it is significantly different than the nation as a whole, and that its proposal would not interfere with interstate commerce."

Subsequently, Congress passed NECPA with the preemption provisions H.R. 6202 now seeks to repeal.

If ever there was a classic case to illustrate why the American business community is overwhelmingly frustrated with its own government, this is it.

At every turn, the rules have been changed — despite a consistent industry record of cooperation and progress in energy conservation.

H.R. 6202 is one more link in this chain of frustrating events and we say "enough." The present law is a carefully and well-constructed balancing of the interests of the Federal government, the appliance industry, and state governments.

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The primary responsibility is delegated to the DOE. They are to determine if Federal standards are necessary to accomplish national energy conservation goals.

Appliance manufacturers have an opportunity to make their case against, or for - as the case may be - standards.

The states can also participate in DOE's hearings — and have done so.

In the event of a final rule — either to impose standards or not — any state can petition DOE for an exemption from Federal preemption. Again the interests are balanced and due process is provided both the states and appliance manufacturers.

AHAM sees no justification for dismantling this structure as is proposed by H.R. 6202.

To do so encourages the very thing most feared by Congress when this legislation was debated in 1977 — that is the Balkanization of the U. S. market by a myriad of differing state standards. Such a development would be a catastrophe for consumers.

Advocates of this legislation attempt to point the appliance industry as anti-energy conservationists.

This ignores the facts and is unjust.

AHAM members are producing and selling the more energy efficient models envisioned by the Nixon Administration, the Ford Administration and the Carter Administration.

A state that believes it needs appliance energy standards because of a "significant state or local interest" can make its case for exemption. DOE must then balance this local interest against the burdens on interstate commerce. This is a legitimate Federal function.

Under DOE's proposed administrative procedures, the appliance industry would carry the total burden for making the commerce burden case.

Even if DOE should deny a state petition, the state has additional administrative and judicial recourse.

If a state can make a compelling case for appliance standards, so be it.

But it is crucial that there be a rational forum for balancing the major interests involved. NECPA recognized this need and provided for it.

H.R. 6202 is a step backward and would be a breach of trust.

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Mr. **Ottinger**. Are you authorized to say things that are not in the statement?

Mr. **Sasnett**. Yes, sir.

Mr. **Ottinger**. Your testimony states that at every turn the rules have been changed, despite a consistent industry record of cooperation, and suggests to Congress that H.R. 6202 would change the rules unfairly again.

How do you reconcile that with your support for uniform Federal standards in 1980?

Mr. **Sasnett**. Our support for standards, a national standards program, was based on a strong preemptive requirement in the statute, because we were greatly concerned about the possibility of a patchwork standard in various States.

Mr. **Ottinger**. Why did you change your position?

Mr. **Sasnett**. We believe that the finding of no standard is a standard; that is, it is one in which it has been determined that at the levels which have been calculated by DOE for certain levels of efficiency to be ones that would not be economically justified. Therefore, we find that to be a standard.

Mr. **Ottinger**. Is your analysis of why the industry changed the same?

Mr. **Stephens**. Yes.

Mr. **Ottinger**. Mr. Baily, how do you look at all of this?

STATEMENT OF EDWARD BAILY

Mr. **Baily**. Well, I agree with what has been said; that at one time the rest of the industry agreed with us that national standards were preferable to a number of State standards, and it was not too long ago, as we sat at ARI, discussing this subject, that ARI's committees that deal with these kinds of things agreed with the position. It became obvious under the present administration and the deregulation concept, that this might be an opportunity to get the Government off the industry's back at all levels, and so the position changed.

Our feeling is not based upon the regulatory aspect as much as it is of a manufacturer that makes products that consume significant amounts of energy.

We make heat pumps, central air-conditioners, furnaces and heat pump water heaters, and all of these products consume a significant amount of residential energy.

Our feeling is that we are in the business of supplying comfort to people through these products.

It should be at the least possible drain on the Nation's energy resources, and hopefully the market would take care of this through the market forces that have been discussed, but the facts are, it simply has not happened.

The improvement in central air-conditioners from the time ARI started keeping records has been 5½ percent on split systems, which are the largest category of central air-conditioning products. In the last 3 years, where you would expect to see the greatest improvement, the improvement has virtually been nil.

The way the problem should be handled would be to set standards that are at reasonable levels, clearly cost-effective to consumers, at a low enough level so that we avoid the argument that is brought up: "what about the guy up in Minnesota that uses it for 2 hours a year," but set it at a level of eight, which knocks off 850,000 pieces out of 1,400,000 a significant number that are below 8, and build from there, and let the market forces work at the higher levels.

We also feel it is appropriate to have a second level of standards at some future date that would also be based on the low part of the cost curve, which would not disadvantage consumers.

Mr. **Ottinger**. My father was an industrialist, and he built up a plywood industry in this country and was as fierce a Republican as you can find. His brother ran against F. D. R. for Governor of New York, as a matter of fact. In the wood business he felt that we were fast depleting our forest resources.

He said there ought to be trees planted. Talking to him at that time, I said, well, why don't you go ahead and replant trees? He said, well, I can't do it if my competitors don't do it, because it costs so much. This is one area for legitimate Federal regulation. I would love to see a Federal requirement that everybody had to plant a tree for every tree that was cut down, and for a guy who was strongly disposed against Federal interference, it made sense to him, and it made sense to me. There is a real parallel here.

I take it if there are no Federal standards, people could compete on the basis of having less costly and more energy-inefficient appliances on the market. However, it makes it very difficult to achieve any national energy objectives.

Mr. **Baily**. That is indeed right.

We have 120 of our low-efficiency listings in the ARI Certification Directory on the Carrier brand that are below 8, out of 424. They are there, because we have to compete on all markets in the central air-conditioning business. We are not about to abdicate any markets. If we were to drop those products, we would not be able to compete on a cost basis, largely in the builder business, although I might add, there has been an awful lot of conversation in the last few days about the building business.

The building business is way down and despite that fact, despite the fact that a larger percentage of products sold in this last year or two have been to the add-on and replacement market rather than residential new construction, we have not seen any significant increase in the shipment weighted averages on central air, which leads me to believe that individual consumers don't know any more about buying an efficient product than the builder does. He is quoted the lowest price, and he buys it.

Mr. **Ottinger**. What do you folks say to that?

Mr. **Stephens**. May I address that briefly, Mr. Chairman?

Mr. **Ottinger**. I hoped you would.

Mr. **Stephens**. I am going to speak as a Lennox representative, if I may. We have for the last several years been introducing more efficient product lines and dropping some of our lesser efficient lines, and we are just now bringing most of these more efficient lines into the marketplace.

Now, the figures that have been quoted here have indicated that there is no efficiency improvement that has occurred in the central air-conditioning sales weighted averages.

Let me give you some numbers that are out of Lennox; we like the idea of being able to develop very high efficiency equipment and sell that in the American market today. We have some of the best numbers in the industry on both heating and cooling.

1979, our sales weighted average efficiency was 7 EER, 7.06. 1980, that moved up to 7.14. 1981, 7.73.

Projected with what history we have in this year through 1982, we will be selling at the rate of 8.18 at the end of this year forecasted, because we know the products we are introducing and those that we're dropping. 1983, 8:45. 1984, 8.62.

Mr. **Ottinger**. Do you have information on what the figures in Japan are?

Mr. **Stephens**. In this area, no, sir.

Mr. **Sasnett**. I recited some figures earlier for the improvement in efficiency of the products represented by AHAM, and I believe those very definitely indicate a substantial improvement in efficiency over the years, and we believe that that efficiency improvement will continue.

Mr. **Ottinger**. The GAO report says that the California appliance efficiency standards may have increased the overall efficiency of appliances sold in the United States. Five of the six manufacturers surveyed said the California standards have increased the availability of more efficient models and generally led to upgrading of overall efficiency levels.

The sixth company had no opinion, because it does not sell in California.

Do you think that the State standards have indeed had a salutary effect on improving efficiency? Would you comment on the GAO finding?

Mr. **Sasnett**. Mr. Chairman, I think there has been naturally some degree of effect on refrigerators, the efficiency of refrigerators by the California standards, but I would like to point out that as of this time, the efficiency of the refrigerators and the freezers for all of our member companies surpassed the requirements levels for California, and not only have they surpassed it by a small amount, but a substantial amount.

Therefore, there is no driving force from a regulatory point of view that caused that increase. That, we believe, is the free market working and it very definitely is moving those to a higher efficiency. So I disagree with the GAO.

Mr. **Ottinger**. It said data collected by the Air Conditioning and Refrigeration Institute shows that the only significant increase in average central air-conditioner efficiency from 1975 to 1980 occurred in 1978, the first year after the California standard became effective.

Mr. **Stephens**. I really don't have any definitive information on that. We can get that for you, and we will be happy to write it back.

Mr. **Ottinger**. That would be rather significant. I indicated that products have been improving in energy efficiency performance since 1980, but if in fact this result was spurred by the California standard, that would be significant.

Mr. **Baily**. Could I just make a short comment on that?

Very definitely in the central air conditioning business, the California standards did impact the national averages. For example, California went from a 7 to an 8 effective November 3, 1979, which was a 14-percent increase in the minimum. We believe that an increase of that order of magnitude in the overall average efficiency of the products sold in the State, representing about 10 percent of national, would have about a 1.4 percent impact nationally. That exceeded the national increase for the years 1978 to 1980 which says to us that California did it by itself.

If it hadn't been for California, it would have gone down.

Packaged units, represent, and I will give you some rough numbers, about 150,000 industry units per year in the Nation and year-round air-conditioners, which are combination gas and electric, roughly 150,000 industry units per year as opposed to 1,500,000 split systems.

Manufacturers of products with that low an industry volume as packaged and year round generally cannot maintain more than one product line to their markets; in other words, lines of more than one efficiency. So when the California requirements went in, California, being a heavy user of that type of equipment in the 30- to 35-percent range of total, those that wished to continue to compete in California had to upgrade to meet the minmum standard. The efficiencies improved on those products in the 8- to 10-percent range as opposed to the 1.1 on a national basis for split systems, clearly driven by California.

[Testimony resumes on p. 128.]

[The prepared statement and attachments of Mr. Baily follow:]

COMMENTS
OF
CARRIER CORPORATION
ON THE
DEPARTMENT OF ENERGY'S
PROPOSED "NO STANDARD" RULE
FOR
MAJOR HOME APPLIANCES

(Presented by Edward Baily)

Carrier Corporation, headquartered in Syracuse, New York, a subsidiary of United Technologies Corporation, is a major manufacturer of residential central air conditioners and furnaces which are sold under the Carrier, Bryant, Day & Night and Payne brands throughout the United States. Carrier also manufactures a third product covered by these proceedings, room air conditioners, although we are considered a small manufacturer in this market.

Carrier has been an outspoken advocate of energy conservation. Our products, on an industry-wide basis, account for a major share of residential energy consumption. It has seemed clear to us, during the eight years that we have worked closely with the National Bureau of Standards, the Federal Energy Administration and the Department of Energy, that whatever reasonable and responsible measures were appropriate to reduce the energy consumption of these products would be in the best interests of consumers, the industry and the nation as a whole.

Carrier continues to support minimum energy efficiency standards for the three contractor-installed products -- central air conditioners, furnaces and water heaters. They consume almost 80% of residential energy, and as the experience of the last six years has proved, are the least likely to respond to efficiency improvements due to "market forces" since they are purchased primarily by builders rather than end-use consumers.

It seems to us that it was the intent of Congress in enacting EPCA, as later amended by NECPA, to reduce national energy consumption of appliances by establishing minimum standards where appropriate. Safeguards were built into the law to prevent undue burden and to assure that the benefits would exceed any burden. In response to the Congressional mandate, DOE published a proposed rule on June 30, 1980 in which specific numerical minimum standards were proposed for nine product types. Hearings on that proposal were held in mid-August 1980. This week, twenty-one months later, DOE held hearings on a reproposal of that rule which now says that standards are not justified for any of the covered products.

We agree that unnecessary and burdensome regulation should not be tolerated. But not all regulation is bad. If a regulation can accomplish a purpose that cannot be otherwise accomplished, and can do it without undue burden, such a regulation is justified.

We believe that Section 325 should be looked at in that context, on a product-by-product basis, to determine what reasonable level of minimum energy efficiency standards would make a meaningful contribution to our national energy conservation goals without burden on consumers or the industries involved.

Untold hours on the part of DOE and the industry and financial resources in the millions of dollars have been expended on this program in an attempt to unravel tons of data and myriad challengeable assumptions to establish standards that meet the multi-faceted requirements of the law. Unduly burdensome and expensive accoutrements were added in such areas as the statistical sampling requirements of the test procedures and the Certification/Enforcement Program on the assumption that industry might wittingly or unwittingly give consumers less than full value.

Perhaps we might find it profitable to take a page from the Japanese book and consider working together, government and industry, to accomplish our national goals while satisfying the best interests of all parties concerned.

It is in this context that we would like to discuss a specific approach and recommendation on the minimum standards issue.

ALL PRODUCTS ARE NOT ALIKE

There is a vast difference in the potential for conservation through standards between appliance-type products and contractor-installed products.

The covered appliance type products, such as refrigerators, freezers, clothes washers and room air conditioners account for less than 20% of residential energy consumption. Significant increases in energy efficiency on a shipment-weighted average basis already have been achieved for these products since 1972.

For example:

Refrigerator-Freezers - up 58.6%

Clothes Washers - up 58.0%

Freezers - up 54.6%

Dishwashers - up 45.0%

Room Air Conditioners - up 18.1%

(SOURCE: Association of Home Appliance Manufacturers)

But the three contractor-installed products, central air conditioners, furnaces and water heaters, account for almost 80% of residential energy consumption. Yet in this product group where the greatest potential for savings exists, the efficiency improvement that should have been spurred by so called "market forces" failed to materialize.

Let me focus on central air conditioners where industry statistics are available. ARI data show that in the period from 1975 to 1981 the efficiency of split system central air conditioners improved only 5.5%. In the last three years, where the market forces argument would conclude that momentum should be building, the shipment-weighted average was at a virtual standstill. Had it not been for California's gains through minimum standards there would have been a negative trend rather than an improvement. Here are the shipment-weighted averages:

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1978 - 7.47 EER
1979 - 7.50 EER
1980 - 7.55 EER
1981 - 7.55 EER

For this type of product, market forces are simply not working. It's not hard to understand why.

Roughly half of the units shipped are installed by builders in new construction. Builders are generally interested in keeping first cost down. This is documented by a survey of builders conducted by the NAHB Research Foundation in 1980 under contract to DOE. Quoting from the report's abstract:

> "Analysis of the resulting 406 questionnaires indicated that builders were primarily responsible for brand selection. These choices were made primarily without regard for energy efficiency of the product. A similar apparent lack of consideration of energy efficiency during brand and model selection was found among home-buyers and specialized subcontractors."

Among consumers purchasing add-on or replacement units there is an amazing lack of understnading of central air conditioning efficiency. Despite the efforts of Carrier and others to "sell up" to higher efficiency, the sale is controlled by the local dealer who frequently chooses to sell price rather than efficiency in fear of his customer receiving a lower quotation from a competitor.

When the 1980 ARI industry shipment figures were published, showing only a 1.1% improvement compared to 1978, we were surprised. We reasoned that there must be exceptions to the national pattern where market forces were working. We checked Carrier sales figures in Florida, where the hours of operation are long, and in the metropolitan New York area where electricity costs are the highest in the nation.

In Florida, efficiency increased only 1-1/2% in the two-year period, just slightly above the national average. In New York there was a 1-1/2% decline. Market forces evidently were not working even in areas where logic would suggest they should.

It is clear to Carrier that anything less than immediate promulgation of minimum standards for this type of equipment is simply not in the nation's best interests.

As we mentioned earlier, these products consume the bulk of residential energy yet have absolutely failed to respond to energy market forces.

Specifically, we urge DOE to establish a minimum standard of 8.0 SEER for central air conditioners effective at the earliest date allowed by NECPA to banish from the marketplace the 54.8% of central air conditioning equipment that was sold in 1981 below the 8.0 level. We further urge that the minimum standard be increased to a higher level effective in 1986.

IMPACT ON MANUFACTURERS AND CONSUMERS

As ARI pointed out in testimony to DOE, in two years the industry has come a long way in making higher efficiency central air conditioners available. As the attached table (Exhibit I) shows, 58.8% of the listings in the January-June 1982 ARI Certification Directory are at or above 8.0 SEER. Redesigning to meet such a low standard is no longer a problem, but getting people to buy higher efficiency equipment is.

If low efficiency models were removed from the market by standards, manufacturers would benefit from the reduced costs inherent in a shorter product line.

Carrier, for instance, could eliminate 120 low-efficiency listings out of 424 with positive cost benefit not only to ourselves but to our distributors, dealers, and ultimately, the consumer.

We also believe that with an 8.0 minimum in 1983 and a higher minimum in 1986, we would, as an industry, be less vulnerable to Japanese competition in the United States.

If we get our industry house in order by offering only high efficiency equipment, this market will be vastly less attractive to the Japanese. Our national economy would have been in better shape today had the automobile industry taken similar steps 10 years ago.

High efficiency equipment is more costly to build, but a volume base will gradually lower this cost making affordable-to-operate equipment also affordable-to-buy -- a double benefit to consumers.

ENERGY SAVINGS POTENTIAL OF STANDARDS

Conservation of energy, and, from the utilities' standpoint, reduction in peak load are the prime issues here today.

Exhibit II is Carrier's analysis of energy savings as a result of central air conditioner minimum standards set at 8.0 SEER in 1983 and let's say a 9.0 SEER in 1986 compared to a "no-standard-standard".

The analysis is for split-systems only but can be projected to include all systems less than 65,000 BTUH, including heat pumps. The savings increase year-by-year as existing equipment is replaced.

By 1997, fifteen years from now, only equipment built to the standard would be operating.

By 1997:

> The utility summer peak would be reduced 26.1 million kilowatts as opposed to the peak under a "no-standard-standard". At $1500 per kw of new generating capacity that translates to $39 billion of cost avoidance.

Savings in energy consumption would be at the annual rate of 43.75 million barrels of oil equivalent. That's 120,000 barrels of oil equivalent per day.

We think those savings are significant!

PROGRAM COSTS

The avalanche of criticism that came down on the Department of Energy after the promulgation of the first proposal in June, 1980, was not focused on the standard, but on the certification/enforcement program that would have created enormous burdens on the industry and increased cost for consumers.

We believe that a minimum standards program for these products can be put in place at little cost to taxpayers or the industry if government and industry work together.

Specifically, we believe that the safeguards needed to support a minimum standards program can be, in fact are being, accomplished by industry and require no duplicate government effort:

1) Test procedures are already in place. Future changes should be proposed by industry subject to DOE review. Such a proposal from ARI to improve the central air conditioning test procedure is now before DOE.
2) The current sampling plan, requiring statistical testing of all tested units should not be required. We, as manufacturers, who are responsible for the validity of our ratings will continue to use statistical techniques to assure the needed confidence but should be given the opportunity to rate conservatively without exhaustive testing where appropriate. Elimination of the requirement would substantially reduce the burden on manufacturers.
3) There is no need for a government certification/enforcement program.

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The certification/enforcement provisions of NECPA were written to provide a verification mechanism for those products where none existed. Industry programs now exist for all three contractor-installed products.

ARI has for more than 20 years operated a certification/verification program to protect consumers -- and, I might add, to protect members of the industry. It is an outstanding example of effective industry self-regulation.

The Gas Appliance Manufacturers Association has launched a similar program for furnaces and water heaters.

The certification/enforcement requirements of the law can be satisfied at no cost to the taxpayer or burden to the manufacturer by DOE adoption of these existing programs.

CONCLUSION

In summary, Carrier urges the Department of Energy to set a minimum energy efficiency standard for central air conditioners at 8.0 SEER at the earliest possible effective date.

1) It will eliminate the low efficiency equipment still being sold in substantial volume. It will start us on the road to the significant energy savings that will be achieved once standards are in place.
2) It is a standard that can be met, right now, by existing products.
3) It will offer immediate benefit to the vast majority of consumers and disadvantages to few, if any.
4) It has the important advantage to manufacturers of being consistent with standards already in place in California, Kansas, New York and Florida.

We also urge the setting of a higher second level to be effective in 1986.

EXHIBIT I

CENTRAL AIR CONDITIONERS - COOLING
TOTAL LINE-LISTING EFFICIENCY DISTRIBUTION
ARI JAN-JUNE 1982 CERTIFICATION DIRECTORY

BRAND	BELOW 7.0	7.0 TO 7.95	8.0 TO 8.45	8.5 TO 8.95	9.0 TO 9.45	9.5 & ABOVE	TOTAL
ADDISON	77	61	89	72	9	-	308
AMANA	10	8	15	15	-	-	48
BARD	11	12	18	5	3	-	49
BRYANT	60	150	31	78	26	92	437
DAY & NIGHT	60	150	31	78	26	92	437
PAYNE	60	150	31	78	26	92	437
CARRIER	62	58	142	94	30	38	424
COLEMAN	-	-	30	25	3	52	110
DUNHAM-BUSH	10	-	-	-	-	-	10
DUOTHERM	-	4	5	-	-	-	9
EUBANK	-	6	7	2	-	-	15
FASCO	7	3	-	-	-	-	10
FEDDERS	5	32	61	9	40	-	147
AIRTEMP	5	32	61	9	40	-	147
CLIMATROL	5	32	61	9	40	-	147
GENERAL ELECTRIC	62	133	90	95	48	61	489
GOETTL	10	4	-	-	-	-	14
HEAT CONTROLLER	114	89	48	19	4	-	274
CENTURY	114	89	48	19	4	-	274
HEIL-QUAKER	4	8	41	25	18	37	133
WHIRLPOOL	4	8	41	25	18	37	133
HOME	-	4	6	4	-	-	14
INTERDYNE	-	21	20	12	2	-	55
INTERTHERM	-	33	27	18	2	-	80
LENNOX	52	58	43	75	21	119	368
LOWE'S	3	4	3	3	1	-	14
MAGIC CHEF	95	200	96	19	3	-	420
MONTGOMERY WARD	-	2	19	10	10	16	57
NORTHRUP	38	40	15	5	-	5	103
PHILCO	45	75	23	-	-	-	143
RHEEM	-	2	65	45	35	24	170
RUUD	-	2	65	45	35	24	170
SEARS	3	7	17	12	18	13	70
SINGER	6	35	8	26	12	-	88
SOUTHWEST	17	48	9	39	-	-	113
SQUARE D	6	50	25	4	-	-	85
TRANE	9	85	25	12	1	25	156
WILLIAMSON	2	8	42	6	5	-	63
YORK	4	24	71	59	41	31	230
FRASER & JOHNSTON	25	15	22	48	17	-	127
LUXAIRE	25	15	22	48	17	-	127
MONCRIEF	25	15	22	48	17	-	127
JOHN ZINK	-	-	-	-	-	-	-
TOTAL (ALL BRANDS)	1052	1780	1482	1195	575	758	6832
% TO TOTAL	15.1	26.1	21.8	17.5	8.4	11.1	100
TOTAL W/O SECONDARY BRANDS	734	1287	1112	836	351	513	4833
% TO TOTAL	15.2	26.6	23.0	17.3	7.3	10.6	100

EXHIBIT II

CENTRAL AIR CONDITIONER SPLIT SYSTEMS <65,000 BTUH
ANALYSIS OF ENERGY SAVINGS POTENTIAL VIA
FEDERAL MINIMUM ENERGY EFFICIENCY STANDARDS

MIN. STD.	(1) YEAR	(2) SPLIT SYSTEM SHIPMENTS <65,000 BTUH	(3) SHIPMENT-WEIGHTED EFFICIENCY W/O STDS (EER)	(3) SEER	(4) SHIPMENT-WEIGHTED EFFICIENCY WITH STDS (SEER)	(5) KW REDUCTION PER SYSTEM	(6) ANNUAL KWH SAVED PER SYSTEM AT 1000 HRS/YR AVERAGE	(7) KWH SAVINGS X SHIPMENTS (6) X (2) (MILLIONS)	(8) CUMULATIVE KWH SAVED AT POINT OF USE (MILLIONS)	(9) CUMULATIVE KWH SAVED AT UTILITY (8)÷0.35 (MILLIONS)	(10) BBL. OIL EQUIVALENT (9)÷1701 (MILLIONS)
NONE	1978	1,696,876 ACT	(7.47)								
NONE	1979	1,642,729 ACT	(7.50)								
NONE	1980	1,363,366 ACT	(7.55)								
NONE	1981	1,467,500 ACT	(7.55)**	7.74 ×1.005↓*							
NONE	1982	1,190,000 EST		7.78							
8.0 SEER	1983	1,480,000		7.82	×1.005↓* 8.50	.337	337	499	499	1,426	.8
	1984	1,586,000		7.86	8.54	.334	334	530	1,029	2,940	1.7
	1985	1,726,000		7.90	8.58	.331	331	571	1,600	4,571	2.7
9.0 SEER	1986	1,910,000		7.94	9.29	.604	604	1,154	2,754	7,869	4.6
	1987	1,880,000		7.98	9.34	.602	602	1,132	3,886	11,103	6.5
	1988	2,500,000		8.01	9.38	.602	602	1,505	5,391	15,403	9.1
	1989	1,900,000		8.06	9.43	.595	595	1,130	6,521	18,631	11.0
	1990	2,200,000		8.10	9.48	.593	593	1,305	7,825	22,357	13.1
	1991	2,200,000		8.14	9.52	.588	588	1,294	9,120	26,057	15.3
	1992	2,400,000		8.18	9.57	.586	586	1,406	10,526	30,074	17.7
	1993	2,300,000		8.22	9.62	.584	584	1,343	11,869	33,911	19.9
	1994	2,050,000		8.26	9.67	.583	583	1,195	13,064	37,326	21.9
	1995	2,140,000		8.30	9.72	.580	580	1,241	14,305	40,871	24.0
	1996	1,900,000		8.34	9.77	.579	579	1,100	15,405	44,014	25.9
	1997	2,200,000		8.38	9.81	.574	574	1,263	16,668	47,623	28.0

NOTES:

* ASSUME "MARKET FORCES" WILL CONTINUE TO INCREASE EFFICIENCY AT THE 1978-80 RATE OF ½% PER YEAR WITH OR WITHOUT STANDARDS

** CALCULATED ON ASSUMPTION THAT EER=SEER X .975

SAVINGS BASED ON INDUSTRY AVERAGE CAPACITY OF 33,000 BTUH

THIS ANALYSIS IS FOR SPLIT SYSTEMS ONLY (64% OF 1981 SHIPMENTS). SAVINGS FOR TOTAL MARKET, INCLUDING PACKAGED EQUIPMENT AND HEAT PUMPS LESS THAN 65,000 BTUH WILL BE 43,750,000 BBL OIL EQUIVALENT BY 1997, OR 120,000 BBL OIL EQUIVALENT PER DAY.

INDUSTRY SHIPMENT ESTIMATES ARE BY CARRIER CORPORATION, 4/82.

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COMMENTS OF
CARRIER CORPORATION
A SUBSIDIARY OF UNITED TECHNOLOGIES CORPORATION
REGARDING
H.R. 6202
TO AMEND EPCA to
ELIMINATE FEDERAL PREEMPTION
OF A STATE'S RIGHT TO
ESTABLISH AND ENFORCE
MINIMUM ENERGY EFFICIENCY STANDARDS
IF A FEDERAL STANDARD
HAS NOT BEEN ESTABLISHED

The preemption provisions of Section 327 were wisely written into the law by Congress to avoid a proliferation of individual state standards during the time that standards were being developed and after promulgation by DOE. Congress foresaw that responsible national standards, once promulgated, would satisfy the energy conservation needs of individual states.

It is doubtful that Congress foresaw that DOE would propose a no-standard-standard for the eight covered products including contractor-installed equipment for which standards can be clearly justified.

There are those who argue that the preemption provisions in the reproposed rule of April 2, 1982 are too weak and that the rule should be strengthened to make it more difficult for states to petition or for DOE to grant petitions.

They also argue that preemption should be effective upon promulgation of DOE's final rule rather than upon the effective date of the rule. If this argument should prevail it would open a window through which manufacturers could legally dump low-efficiency equipment into petitioning states.

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In the light of the legal uncertainty surrounding the preemption issue and to avoid a serious violation of the rights of states, already abused by the failure of the Department of Energy to set responsible standards as required by law, Carrier Corporation supports H.R. 6202.

H.R. 6202 would also protect the rights of those states which had relied on the federal government to establish minimum standards that would contribute to their energy conservation goals. Such states may find the final petition process too much of a burden to establish needed standards or maintain existing standards.

For example, 46 states have adopted the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 90 which provides minimum efficiency standards, albeit at a currently low level, for air conditioning in new buildings.

Similarly at least 11 states have adopted regulations prohibiting wasteful standing pilots in gas furnaces. Our sales experience in states without standing pilot bans has been a preponderance of sales ranging from 56% to 89% of furnaces equipped with standing pilot lights. To preempt standing pilot bans, where they exist, would be an infringement of a state's rights.

Mr. Ottinger. I am going to have to leave to go vote.

Are there other manufacturers within the association that take your position on this question?

Mr. Baily. There was an article in the industry trade paper called "Air Conditioning, Heating and Refrigeration News" that came out in early May that said Amana came out saying they were in favor of standards as they were finding that the market was not responding to higher efficiency offerings, and they were forced to keep their low-end product in the line as many other manufacturers have.

I did talk with Amana subsequent to reading that and they confirmed that that was their position, and they wanted to be here but because of a local problem in the company were not able to.

Mr. Sasnett. Mr. Chairman, regarding the Amana situation, Amana is not currently a member of our organization. However, Amana has authorized us, if the issue came up regarding their position, authorized us to state their position regarding this particular bill, and if I can read one short paragraph, it would be the Amana position:

> While Amana supports a federal standard for certain of the covered products, we are strongly opposed to H.R. 6202 for the following reasons: (1) It is contrary to a repeatedly expressed legislative intention to address the issue of energy efficiency standards on a national basis; (2) manufacturers' costs would be increased; (3) competition within the affected industries is likely to be less vigorous; (4) consumers, presumably the intended beneficiaries of this bill, would be faced with higher initial costs for the products involved; and (5) the burden placed on interestate commerce is so great as to render the bill of doubtful constitutionality.

Thank you, sir.

Mr. Ottinger. Well, they have urged the Department of Energy to issue a national standard, I take it?

Mr. Sasnett. That is right.

Mr. Ottinger. I am going to have to recess to go vote, unfortunately. We will pick up as soon as I can get back, in about 10 minutes.

[Brief recess.]

Mr. Ottinger. Ms. Freeman has a few questions.

Ms. Freeman. Thank you.

I have a number of questions which I would like to ask, and perhaps the ARI representative can respond first.

The first question is, How, if at all, are State standards, those that presently exist, imposing a hardship on the manufacturing industry, and can you document the damage done to industry, if you feel that there is any?

Mr. Stephens. State standards require manufacturers to develop dual lines of equipment.

In that case, you find yourself with double inventories, double manufacturing runs, double parts, repair parts, inventories, double spec sheets, service training programs, all of that is double.

It creates quite a burden for a manufacturer which sometimes cannot all be assigned to the special products, because it would in some cases price those products out of the special market that you are trying to sell it into, and we can document that.

I do not have that with us.

Ms. Freeman. You can document that there has been damage?

Mr. Stephens. Yes.

Ms. Freeman. You do feel that standards have imposed a hardship?

Mr. Stephens. It starts back with R&D. You have got to design the special products in the beginning and move through the whole manufacturing process to get them into the special requirement.

Mr. Ottinger. Let me ask at this point, because we had the same kind of representations made to us by the automobile industry for a good number of years, that being, "just leave us alone," but we imposed gas mileage efficiency standards on them, and if we had not done it, they generally acknowledge now, they would be out of the marketplace altogether.

I asked about the Japanese manufacturers, because my understanding is that they are coming out with much more efficient equipment in some of these lines than we are.

Are you asking to go the way of the automobile, leave us alone and let us go out of business?

Mr. Stephens. We are asking you not to. We read you some numbers a while ago that indicate, unlike the automobile industry, we do not have to have somebody jog us into the higher efficiency gear. It is available today. Sales are brisk in the high-efficiency products.

If you will give me just a moment, let me read you some numbers here, some statistics from the ARI program that will indicate that there is some movement in the efficiency level of central air-conditioners.

In 1980, 63.2 percent of the split air-conditioners sold in this country, including California, was below 7.5 EER or SEER, as the case may be.

By 1982, 63.7 of the same models were above the 7.5, EER or SEER, indicating that the industry moved quite a lot in just 2 years in getting their efficiencies up.

Now, there is a cycle time involved in designing new equipment, and certainly we think probably one of the most important factors in getting this done is the high cost of energy, the deregulation of gas and oil.

Consumers today are concerned about their power bills, their gas bills, and they are asking for high-efficiency equipment. We are offering it to them, the industry is, so we want to avoid the Japanese connection.

Mr. Ottinger. Thank you.

Ms. Freeman. Would anyone else care to comment on the automobile parallel?

Mr. Ottinger. And on the concern that at least half of these appliances are not sold to the end consumer, so that the purchaser does not have any real interest in pursuing the least cost life cycle expense for these appliances. Very few people who buy houses or rent apartments make their final decision based on what type of appliances are in it.

Mr. Stephens. I have heard in DOE hearings and other places continual reference to the fact that homebuilders will not buy high-efficiency gear.

The builder will buy those things that can be put in his house and help sell his house. We need to educate the consumer to the fact that high-efficiency equipment is something he wants in that new house, and he is asking for it, and some builders are applying that.

One large builder in the metroplex, north-central Texas, is building probably more houses than anybody in that area, is supplying a heat pump today, when a gas furnace and an electric air-conditioner would be a less expensive device to go with.

I do believe, and we are experiencing this, that builders will buy high efficiency. They are being sold it. We are going to see the builder market react the same as the existing market. It just takes a little longer for the cycle time to get down to that level.

Mr. **Sasnett**. I would like to comment on two of the items, and one regards the parallel with the automobile industry.

There is quite a substantial difference between a fleet-weighted average and a minimal level of efficiency, whereas with the fleet-weighted average, there is no constraint to sell a product with a higher, or a lower gas mileage only from an industry point of view of promoting and pushing for it to get the average up.

In the case of minimum standards, if they become the rule, then you cannot sell those low efficiency. That is the difference.

Mr. **Ottinger**. Would you support Federal fleet average standards on home appliances?

Mr. **Sasnett**. No, I would not, Mr. Chairman, for the reason that I believe that the industry is already doing those things that are causing the efficiency to increase, and that is precisely the numbers that we have indicated for our AHAM products.

If we look at this issue of the builder making determinations as to what goes into the house, and I certainly second what Mr. Stephens said about that, that the builder is building his product, his house so it can be sold, and I think that the consumers are indeed getting more and more educated in the energy efficiency; witness the things that are happening in our AHAM type of products.

In building a house, I think the builder is looking for the most cost-effective for the total house as opposed to the cost-effective for each individual item taken separately one at a time. He is looking at a total product, and I think that is the difference, and I think that the tradeoffs that he makes to get an overall efficiency of the home to the point where it will satisfy his customer is in the best interests of consumers.

Ms. **Freeman**. I would like to make a comment following up on that, and go back to one question.

I am pleased that you brought up the builder question, because I noted that neither the ARI or AHAM testimony dealt with the issue of third-party purchases, and I wonder whether or not you acknowledge the situation to be a problem.

The GAO report which you are all familiar with addressed the issue as well, and stated that according to manufacturers, and they conducted a survey of some manufacturers, about half the new furnaces and central air-conditioners go to the new housing industry in a typical year. The GAO also stated that five of the six appliance manufacturers they visited, which represented a sample of manufacturers, indicated that builders are very price sensitive and that future operating costs are not a major consideration in their appliance purchase decisions. Because of this situation, these manufacturers said companies would feel obliged to manufacture low-efficiency appliances if there are no national efficiency standards.

Mr. **Sasnett**. If I may comment on that.

Ms. **Freeman**. Certainly.

Mr. **Sasnett**. General Electric, and if I may speak as General Electric at this point, General Electric happened to be one of the companies that was interviewed, and I happened to be the person that was interviewed, so I can state that I did not say that. The commentary relative to builders would not be interested in higher efficiency products. What I said was very similar to the statement that I just made, that the builders consider the overall product and are very interested in providing a product that will sell their homes, and I gave some examples of those kinds of things in which builders are putting in not the lowest-price refrigerator that can be purchased, but one that has 24 cubic feet, ice service through the door, in many instances in order to provide additional benefits that their customers want, so I believe that the statement that is made in there is not properly representative of the commentary that we made.

I did say that they were price-sensitive, and I agree to that, but they are looking at it from the total overall house, not each individual item to have the lowest cost.

Ms. **Freeman**. What was your reaction to the National Association of Home Builders Research Foundation's, statement in their 1980 study that most of the builders responded that of the factors which determined the brand and model of appliances installed in the houses they built, 61 percent of the builders did not consider energy efficiency in making the choice, and in only 11 percent was efficiency a consideration?

Mr. **Sasnett**. I have seen that report, and we have studied it. I do not have it with me. But I believe that many different interpretations can be made from the data that are supplied there, and I certainly would not agree with the conclusions that were made, and I would be happy to supply you with an analysis of that particular report.

Mr. **Stephens**. There was testimony in the DOE hearing of the last 3 days that there is another such survey out of builders, progressive builders, something, that indicates quite a large number of builders are interested in energy conservation. I would be happy to submit it for the record. Up to about 70 percent are now interested in purchasing energy-conserving appliances.

Ms. **Freeman**. One more comment from you. You did not respond to the original question of, does the association feel that existing State standards have imposed a hardship on the industry?

Mr. **Sasnett**. Yes, I will respond.

We do feel that they have put a hardship on the industry, and I think particularly in looking at room air-conditioners for one of the products that we represent, our trade association.

General Electric has estimated that the standards in California and New York both have caused a reduction in sales of 30 percent in standards for those products compared to the rest of the Nation, and we certainly feel this is a hardship on the manufacturers, but also the dealers and distributors.

Mr. **Ottinger**. Do you have any way of showing in that ascertainment how much of the reduced sales is due to the recession, depression, whatever you want to call it, and how much is due to the standards? And wasn't that reduction due to the fact that when those state standards were established, but before they became effective, you released a considerable number of those products into those markets?

Mr. **Sasnett**. Mr. Chairman, that calculation was based on analysis of developing an index between the individual State sales and the national sales, so I believe that it has taken those, or it has not separated out those variables. They are all included in both cases.

Ms. **Freeman**. Mr. Baily.

Mr. **Baily**. We have gotten on several different topics. Speaking from the standpoint of the central air conditioning business and the impact of State standards on our company, it has not been a hardship, particularly for one reason, I think, that California led with an 8, followed by Kansas, who went along with the same level as being a cost-effective standard that would get the bad performers out of the marketplace without undue burden on consumers, followed by the State of New York at an 8, followed by Florida, who has an 8 in their building code for those who elect not to use the total building performance criteria, they have an 8 level.

I am sorry that Florida was not here, because Mr. Haslem, who is the head of the Codes and Standards Branch, stated yesterday that the State of Florida is intending to impose minimum efficiency standards on air conditioning for those that are not covered by the building code, which is an important thing in the State of Florida, because the replacement market is a very large segment of Florida's business, and if they are not covered, the lower efficiency products can still be sold.

From the standpoint of impact of standards, we can look at utility incentive programs which are standards in effect, not to a mandatory standpoint as there is choice, but they do affect the market. When a new utility program comes aboard, we hear from our distributors, we hear from them, what is the matter with us, we need to have the right product. If you are too low, you do not qualify. If you are too high, your costs are too high.

Regarding the market taking care of itself in the builder business, people demanding and builders providing better equipment, I am glad to be sitting next to Mr. Sasnett, because that is probably quite true in the appliance business that he represents, but I have yet to find anybody walking out of a housing development looking at a new house who can tell you what kind of a furnace it was in the basement or what kind of an air-conditioner sitting out back by brand, let alone what the efficiency is. If you were to call a number of builders in the area and ask them what is the efficiency of air-conditioning are they putting into their buildings, my suspicion is, you could not get anyone that could tell you offhand what they were doing.

The other comment I would like to make as far as availability of equipment is concerned, Carrier too has high-efficiency equipment on the market, and we have been struggling to sell the advantages of buying it.

Our statistics track pretty closely the ARI statistics. I participate in ARI as vice-chairman of the communications committee, and we are trying to get this message across. We are trying.

Mr. **Ottinger**. How do you all feel about DOE getting out of the information business? That is what they are proposing. They are proposing to stop furnishing information, zero it out.

Mr. **Stephens**. I do not see that as a problem for us. We can help educate the consumers, and the utilities are doing quite a job of that today.

Mr. **Sasnett**. We have not discussed that particular issue.

Ms. **Freeman**. I have additional questions for you. For the two gentlemen who said that hardships have been imposed on the industry by existing State standards, we will be very interested at a later point to hear your reaction to DOE testimony that is going to be offered today that states, and I quote:

> States have operated many differing appliance efficiency programs with little apparent adverse effect on the industry. There has been no Federal preemption of State energy efficiency regulations for the last 2 years, and the industry appears to be adjusting to multiple State regulator programs without any major problems.

With respect to the last questions, have any of the manufacturers present or the companies that you represent been in communication with the Office of Management and Budget, and if so, in what way?

Mr. **Stephens**. I have not. I do not know if any colleagues were.

Mr. **Hunt**. I am not sure.

Mr. **Ottinger**. Did you talk to Mr. Stockman or any of his staff?

Mr. **Hunt**. I have not talked to Mr. Stockman.

Ms. **Freeman**. Do you know if any of the companies that you represent here have spoken to the OMB?

Mr. **Hunt**. I am not aware that they have.

Ms. **Freeman**. Are you aware of any other manufacturers who may have been in communication with OMB?

Mr. **Sasnett**. Speaking for AHAM, I cannot answer that question. Perhaps my colleagues can.

Mr. **Ottinger**. Why do you not furnish that to us.

Mr. **Sasnett**. We will do that. You are commenting, asking a question relative to the harm, and you read from the testimony.

Ms. **Freeman**. That is testimony that will be presented to the subcommittee later.

Mr. **Sasnett**. Could we comment? I testified earlier as General Electric representative to DOE, and in that testimony I supplied to them some documents attached to our testimony regarding our concerns with State standards, and I would be happy to supply that information to this committee, if it would be of help to you, providing specific concerns about harm to State standards.

Mr. **Ottinger**. We would like to have all of the information we can get, very genuinely. The decision whether to have Federal standards or State standards or no standards needs to be made as wisely as we can.

Any information that you have about problems with State standards we would be delighted to take into account, including whether you think that if we do go the route of mandating Federal standards, we would be better off from the industry standpoint of having an appliance average standard. I understand you prefer no standard, but if you think there would be a preference for appliance average standards rather than minimum standards, we would be interested in that.

Mr. **Sasnett**. Mr. Chairman, relative to our concerns, I think that the current statute regarding the preemption provisions of the statute that provide for a, I think an adequate forum for addressing the needs that the States may have individually for their approach to their individual concerns, and I think that in any instance, the establishment of standards and mandatory requirements should accomplish some benefits, and I think that going through the process of determining what those benefits are, and weighing the consequences of obtaining those benefits is quite appropriate, and I think that having some degree of consistency on a national basis is appropriate.

Mr. **Ottinger**. If you were on the other side of this issue, and viewing what the DOE has done with these standards so far, would you think that the DOE is a fair forum for making that decision?

Mr. **Sasnett**. I find it very difficult to put myself on the other side, and I prefer not to answer that. I am afraid I have too many years of experience as a businessman.

Ms. **Freeman**. I have just one last question, but first I would like to reiterate that the subcommittee would appreciate from the association's manufacturers any information relative to communication with, meetings with or correspondence with OMB and the accompanying details in regard to who was involved, what the communications were and so forth.

Mr. **Ottinger**. With the Department or with the President as well.

Ms. **Freeman**. Fine.

The last question that I have for the panel is, I believe that ARI, has stated before the Department of Energy, and correct me if this is not so, that labeling of central air-conditioners is not needed.

Do you think that labels are effective, particularly for central air furnaces?

Mr. **Stephens**. Central air is not labeled yet, but furnaces are. While the labeling program for the furnaces was put together with the best intent, it became pretty difficult to use because of the very nature of the fact sheet that indicates the relative efficiency of the furnaces, plus the fact you have to have every manufacturer's book to make a valid comparison.

We think the GAMA directory is a much better device or the ARI directory accomplishing the same thing on cooling.

We understand the intent of the label; we do not think it quite makes it.

Ms. **Freeman**. You do not think they are effective for any of the products?

Mr. **Stephens**. I cannot speak for anything but furnaces and air-conditioners.

Mr. **Sasnett**. For AHAM, we think the labels are indeed effective in many instances, and we think they provide a service to the consumer in providing comparative shopping information, and we think they are having an effect, and we believe that they will continue to do so.

Ms. **Freeman**. Mr. Baily?

Mr. **Baily**. It is nice to be able to agree with both Mr. Stephens and Mr. Sasnett. We agree that labels have been ineffective on furnaces and would be disastrous on central air conditioners and heat pumps.

Ms. **Freeman**. Do you believe with respect to central air and furnaces, that that is partially the case due to the fact that third-party purchases are such a substantial factor?

Mr. **Baily**. That is part of it. Even if you were to go out and buy a furnace today because yours had failed, I doubt very much if the salesman could show you a fact sheet, because it is so difficult to understand, or if he did, if you would understand or become so completely confused that you would go elsewhere to buy where you did not have to put up with that sort of stuff.

Mr. **Ottinger**. Anything else that you would like to furnish the committee?

Mr. **Stephens**. Is there some time frame for the information that we need to supply this in?

Mr. **Ottinger**. Within a reasonable time. Can you do it within a week?

Mr. **Stephens**. I am not sure, can we have two?

Mr. **Ottinger**. You can have two.

One of the things that concerns us, is who really makes these decisions, and on what basis do they make them, so we would like to have your communications with the executive department, including and especially OMB and any others as well.

Mr. **Stephens**. Thank you, sir. We appreciate the privilege of being here.

Mr. **Ottinger**. Next we have the Department of Energy, Mr. Joseph Tribble, accompanied by Linda Gregory, and Tenney Johnson, the General Counsel of the Department of Energy, and we will call up whoever is here from the General Accounting Office as well. I see Maxine Savitz is also here from DOE.

Mr. **Peach**. This is Ken Libbey from our Cincinnati regional office in the GAO who was the person who led the study that we did in the appliance efficiency standards over the last 2 years.

Paul Grace on my left is one of our evaluators out of our Washington office and has been involved in this area.

Mr. **Funk**. My name is William Funk from the General Counsel's Office.

Mr. **Johnson**. I am Tenney Johnson, General Counsel of the Department.

Mr. **Tribble**. I am Joseph Tribble, Assistant Secretary for Conservation and Renewable Energy.

Ms. **Gregory**. I am Linda Gregory, Director of Policy and Management, Conservation and Renewable Energy.

Ms. **Savitz**. Maxine Savitz, Deputy Assistant Secretary for Conservation.

Mr. **Ottinger**. Can you tell us who made these terrible decisions?

Did you recommend something different than was ordered on you by OMB, the President, or where did it come from?

TESTIMONY OF JOSEPH J. TRIBBLE, ASSISTANT SECRETARY FOR CONSERVATION AND RENEWABLE ENERGY, DEPARTMENT OF ENERGY, ACCOMPANIED BY LINDA GREGORY, DIRECTOR, POLICY AND MANAGEMENT, AND MAXINE SAVITZ, DEPUTY ASSISTANT SECRETARY; R. TENNEY JOHNSON, GENERAL COUNSEL, DOE, ACCOMPANIED BY WILLIAM F. FUNK, ASSISTANT GENERAL COUNSEL; AND J. DEXTER PEACH, DIRECTOR, ENERGY AND MINERALS DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY KENNETH LIBBEY, MANAGEMENT ANALYST

Mr. **Tribble**. Let me begin by giving you a synopsis of what has taken place, and if you will recall——

Mr. **Ottinger**. Your statements will appear in the record.

Mr. **Tribble**. Following our last hearing, we did set up the task force that contained staff from General Counsel and from the Policy Office.

There was a great deal of work, as I am sure you are aware, that has been done since that time, and innumerable hours have been spent in trying to decipher the information, and additional computer runs were made and a great deal of work has been done.

To answer your question directly——

Mr. **Ottinger**. Is that process accurately described as taking the figures you got and making them fit your theory?

Mr. **Tribble**. I wouldn't describe it as that at all.

We pointed out at our last hearing that there were a number of questionable features in the data that we had, and we genuinely at that time did feel that it was necessary to go back and reevaluate them, and this has been done.

Some of the models have been reworked with other up-to-date information, so that the decisions that are reflected in the proposed rule are based on information generated by the task force.

Mr. **Ottinger**. Who participated in making that decision or consensus? Did you make a recommendation?

Mr. **Tribble**. No, the only instructions that the task force had from me was that they should examine the questions before them in as objective a way as they could and come forth with the recommendations.

Mr. **Ottinger**. Were you on the task force?

Mr. **Tribble**. No, I was not.

Mr. **Ottinger**. Who was?

Mr. **Tribble**. I am going to ask Ms. Gregory if she could enumerate those people who were, some 10 or 12 people.

Ms. **Gregory**. We had from the Office of Conservation Maxine Savitz, John Millhone, one of our office directors, and a number of the staff members from his organization.

We had from the Office of Policy Planning and Analysis for the Department several representatives; David Meyer and Ursula Gillis being the primary members for the term of the task force.

We had, in addition to that representation from the Office of General Counsel for the Department, initially Ted Wilson and a number of people from his staff, and, when he changed his position in January 1982, his replacement, Lona Feldman participated in the late stages of regulation development.

Mr. **Ottinger**. How did this operate? Did this task force vote?

Ms. **Gregory**. It was not an undemocratic process, but I wouldn't call it quite that democratic.

Basically we attempted to come to a consensus. Where there were issues of concern, the members presented their views, and we debated and sometimes tabled discussions, to come back later.

We ended up basically with a consensus of the group.

Mr. **Ottinger**. The task force came to the consensus of this "no standards" standard for the appliances?

Ms. **Gregory**. For the appliances considered, yes.

Mr. **Ottinger**. Was that a unanimous decision?

Ms. **Gregory**. Since we didn't take votes or record votes, I can't vouch for whether or not, on any particular issue, every single person present voted aye, but there appeared to be a consensus and I am not aware of any major dissenters.

Mr. **Ottinger**. Maxine, did you support this?

Ms. **Savitz**. In some cases, where there were issues that the task force had some differences on, or did not agree, we would bring them up to the principals. Issue papers were developed, and these were discussed with the various assistant secretaries and the General Counsel and then, once a decision had been made, we all agreed and accepted that decision.

Mr. **Ottinger**. How were those communications made?

Did the Secretary or the OMB make their feelings known in this process?

Ms. **Gregory**. Not at that stage, no, sir. We developed an issue paper among the members of the task force.

It was addressed to Mr. Johnson, Mr. Tribble and Hunter Chiles, the Director of the Office of Policy, Planning and Analysis.

Those three usually met and there was a discussion among the principals on the issue. A decision was made and sometimes it was communicated to the task force in writing, but for the most part, verbally.

Mr. **Ottinger**. The task force made a recommendation to Mr. Johnson, and Mr. Tribble and who was the third person?

Ms. **Gregory**. Hunter Chiles.

Mr. **Ottinger**. The decisions were in accordance with the recommendations of the task force?

Ms. **Gregory**. The Task Force didn't always make a recommendation. They sometimes presented the issue in pros and cons and then left it open to discussion.

There was usually a recommendation, and I would say in the cases where a recommendation was made, if my memory serves me correctly, they were pretty much agreed to by the principals.

Mr. **Ottinger**. Pretty much. Were there areas of disagreement?

Were there areas where the task force made a recommendation that was not followed?

Ms. **Gregory**. Not, in terms of the basic recommendation, no.

There might have been a different approach recommended by the principals.

Mr. **Ottinger**. There was no communication by the task force to OMB?

Ms. **Gregory**. No.

Mr. Ottinger. There must have been some communication by the principals?

Ms. Gregory. Each one of the staff members who were representing the task force obviously kept their principals briefed as to what was going on.

Mr. Ottinger. Have we gotten all the documents to which you refer on which these decisions were made?

Ms. Gregory. I am not aware of any request for copies of the issue papers.

Mr. Ottinger. You got it now. We would appreciate receiving communications between the task force and any of the relevant people, even if it is a large volume of documents that is so large that it is uneconomic to produce it.

If it is, we will go down and take a look at it.

Mr. Tribble. That will not be a problem.

[The documents referred to were submitted and may be found in subcommittee files.]

Mr. Ottinger. The task force presumably had communication with manufacturers?

Ms. Gregory. In terms of direct communication?

Mr. Ottinger. Yes.

Ms. Gregory. No, sir, the members on the task force deal with manufacturers on a fairly regular basis in their normal assignments.

Mr. Ottinger. So that you might have accumulated data from manufacturers?

Ms. Gregory. We had for review all of the records associated with the previous rulemaking and any additional information. In addition a number of the associations and some individual manufacturers had written separate correspondence to the Department which we also distributed to task force members.

Mr. Ottinger. Let us pursue this with you a little bit, as I take it there were a number of different recommendations made at different periods of time.

At one point there was a recommendation that there be standards issued for 3, 5 and 8, appliances. How did those changes take place?

What happened when you last recommended three appliances have standards and all of a sudden you decided none?

Ms. Gregory. The task force was created in the June-July time frame of last year which was over a year after the issuance of the April 30 notice of proposed rulemaking.

I was not involved in any of the other rulemakings having come into the Office of Conservation along with the creation of the task force.

Therefore, my participation in it was clearly to start from ground zero, look into the analyses, look into the modeling, and look into the data presented, without any previous history of any of the previous rulemakings.

Maxine Savitz had been through all of the previous rulemakings.

Mr. Ottinger. Did you have any instructions on the task force with regard to what process too follow, written or oral instructions?

Ms. Gregory. There were oral instructions to the task force based on a preliminary evaluation which had determined that further analysis was needed.

The guidance that I received was to put the group together, and to go back as a group, look at the previous work that had been done, and where possible do redos of any analyses that were needed and come out with a relatively objective recommendation as to whether there should be standards.

Mr. Ottinger. What does relatively objective mean?

Ms. Gregory. Recognizing any of the new information that we had received, I would say the recommendation was requested to be totally objective, and we were provided no guidance on where we should go.

Mr. Ottinger. Can you describe from your standpoint how these different recommendations evolved and why?

Ms. Savitz. In February a year ago, we published a notice in the Federal Register that we were going to reexamine the data on which the June 1980 NOPR had been issued. We asked people from the Energy Information Administration, and from the Policy Office, to examine the data, to look at the economic studies and the technical studies.

As a result of their analysis which was quite thorough, suggestions were made to make some additional runs, particularly some sensitivity analyses, with regard to price. We then did some new runs Those results are in the economic analysis data that we published this past April, and, as other new information, new prices became available, we would make additional runs.

This occurred during the summer in order to make our decisions based on the most up-to-date information that we could have. We used at all times the same models that we had used previously and as new information and data became available, we fed that in. But there was no direction of what data to use or any kind of preconceived——

Mr. Ottinger. But the Conservation Office recommended at one point, that three appliances, and at another that time five appliances were have standards issued.

Ms. Savitz. We had internal discussions at various times since the June 1980 analysis. The energy situation has changed as time has gone on, labels have come into effect.

Mr. Ottinger. The impression from where I sit is that there was a tremendous struggle to try to justify not having standards, and that every time the data came out showing standards were justified for any appliance, they were sent back to be refigured so the result could come out to not justify it.

Is that a wholly unfair characterization?

I suppose I should really ask the Secretary and not put you on the spot with that.

Mr. Tribble. Certainly there were no instructions from my office for that to be done. I am not aware that any change was made in the deliberations of the task force with the objective of reaching a predetermined answer.

Mr. Ottinger. Well, the policy of the Department was made pretty clear.

Mr. Tribble. Certainly, that is very true.

Mr. OTTINGER. In testimony before us, philosophically you were opposed to standards, and would like to have seen the standards repealed.

Congress decided that wouldn't happen and we had a right to expect from you an objective determination as to whether or not standards were justified, and I am concerned that that process was not done impartially and indeed in the face of the GAO report my concerns are even greater.

I would like you to address the GAO report, but first I would like to find out how, Mr. Johnson, you get into this and what expertise in energy efficiency you are able to bring to us as one of the three people who make these decisions?

Mr. JOHNSON. My role is as General Counsel of the Departmnet and as chief lawyer in the Department in connection with the rulemaking. The advice of the General Counsel is naturally sought in the preparation of a rule, preparation for potential litigation, in evaluating whether the evidence as presented is substantial and will meet court tests, and eventually we also have a liaison function with OMB in connection with any proposed rules under the Executive order of President Reagan, so as would be expected, and as Ms. Gregory has indicated, there were members of the Office of General Counsel who participated in the task force. That is entirely normal.

Mr. OTTINGER. Did you just give legal advice or did you participate in substantive decisions?

Mr. JOHNSON. My position is that I will give substantive advice if requested, but I will not force it on anyone. I do not think that lawyers function well as policymakers in their own right, except in the area of legal policy.

If people want to ask me as an individual for my views, I am quite willing to give them, but I don't force them on anyone.

In this case I was asked to participate as one of the principals, and I met with Mr. Tribble and Mr. Chiles on two or three occasions where issues that the task force had sought guidance on were submitted and we discussed them. The agreement emerged from those discussions.

However, since you raise the question of how did I get into this, I should clarify that I did request last fall that the matter be sent forward to the Office of Management and Budget, so that we could get an early release of the rule.

I did so at a time when I personally had not read the rule in any detail.

However, at that time, even before learning what OMB's views were, I requested several other people on the staff of General Counsel to review the regulation from the standpoint of its legal sufficiency and to give me advice with respect to that.

The advice I received informally suggested that I should read the rule myself in draft form, and when I did I came to the conclusion that it was not legally sufficient as then presented, and if it were brought to litigation, it would not prevail. The reason is that it did not technically make the findings that the statute required to be made before a decision could be furnished.

With this in mind, I spoke with Mr. Tribble, indicated my concern, and I asked for and received permission to take over the drafting of the rule, always in concert with the task force, but to place the draft rule in what I would consider a legally defensible form.

Mr. Funk in our office assumed the leadership in that particular role, working with the other lawyers, and Ms. Feldman joined him and in the end created a product which in my opinion is legally defensible.

Of course, at the same time we had conversations. When we withdrew the previous draft I mentioned, and submitted a later one to OMB in accordance with Executive order, we did have some discussions with the OMB on minor details, or some details—minor is a matter of viewpoint—and emerged with the proposed rule that you have in front of you.

Mr. OTTINGER. Let me ask you, is it correct that on December 26 the task force approved a final notice of proposed rulemaking?

Mr. JOHNSON. I can't speak to that, December 26?

Ms. GREGORY. In December, yes.

Mr. OTTINGER. All right.

Mr. JOHNSON. This could have been the one that I called back.

Mr. OTTINGER. After that approval, you were brought in—were you brought in by OMB?

Mr. JOHNSON. No, sir, I was not.

Mr. OTTINGER. Well, in the ordinary course of things, that approval would have been sent to OMB?

Mr. JOHNSON. Yes, absolutely, and it certainly was.

Mr. OTTINGER. And then the General Counsel's Office came in on its own initiative?

Mr. JOHNSON. Yes.

Mr. OTTINGER. And then did you, yourself, write and revise the standards?

Mr. JOHNSON. No, sir, I personally did not.

That was a mammoth task and I did entrust it to people.

Mr. OTTINGER. But your office did that?

Mr. JOHNSON. Yes, sir.

Mr. OTTINGER. Did they just deal with the legal language or did they change the substance of it?

Mr. JOHNSON. I don't believe they changed the basic substance of it, but I do think they put it into a form in which all the findings that the statute required were addressed, and indeed in several cases in the alternative, so several tests were made.

For example, there were specific findings in each case with regard to the significance of energy savings, and standard proposals were made.

In the prior draft this was not done. I don't fault the task force because at one point they did ask for our guidance on the question and the group, Mr. Tribble, Mr. Chiles, and myself, gave that guidance to the effect that it would not be necessary to do this.

Later reflection on this in light of the rule that was prepared on this point demonstrated to my satisfaction that this was not sufficient and therefore it would have to be changed.

Mr. OTTINGER. Did your office revise the preamble and technical support documents with respect to the rule?

Mr. JOHNSON. I will have to ask Mr. Funk to address that specifically.

Mr. **Funk**. The question is whether we revised the preamble and the technical support document. In rewriting the preamble to the rule, I read all the technical support documents and made notes on various parts of it in terms of questions to ask and to try and get explanations for some of the numbers that were in the technical support documents.

In a meeting with the people from conservation and policy, I asked them and contractors involved with technical support documents questions and made suggestions as to editing in the technical support document in areas where the technical support document either inaccurately described the process, made legal conclusions, or had spelling errors, and I asked questions in areas where it was not clear to me that the analysis made sense. This resulted in the identification of a number of areas where there were arithmetical errors in the draft, and a lot of conflicts between different tables that were supposed to represent the same thing, but had different numbers in them.

I did not correct these. I just operated in terms of asking questions and some other problems also were found.

Mr. **Ottinger**. Do you have any technical expertise in the subject at hand, energy efficiency of appliances, or does anybody in your office have that expertise?

Mr. **Funk**. My expertise is as a lawyer, and I am just a consumer and user of appliances like the rest of us.

Mr. **Johnson**. I think we can say that we have the right of raising questions of the technical staff and that was done.

I don't think we supplied any technical expertise ourselves, Mr. Chairman.

Mr. **Ottinger**. The key question here is, what constitutes significant energy savings, right?

Mr. **Johnson**. Well, there are three tests, the technological feasibility test was not significant in most areas, so the two tests were the significant energy savings and the economic justification, and both tests were important.

Mr. **Ottinger**. How were the standards set up to determine what are significant energy savings, and what is economically justifiable?

Mr. **Johnson**. We were in the process of proposing the rule, Mr. Chairman and we have, so we have placed in some cases two and in other cases three different possible tests for determining what is significant.

For example, we had recourse in one test to the Energy Policy and Conservation Act as it regards oil, that is, that a savings might be more significant pertained to oil and gas savings, particularly imported oil and gas. So we thought we had a statutory basis for that standard.

All of these standards, Mr. Chairman, are in the nature of proposals, and as we receive the documents in the hearings we have had, and as we later receive written comments, we will have to evaluate the proposed standards in light of those comments.

Mr. **Ottinger**. You mean in making the decision to propose a rule of "no standard," that there were not first established criteria for what was a significant energy saving?

Mr. **Johnson**. We had recourse to the criteria that were set up in the statute and that were not specific in terms of numbers, and we had to make some more specific standard against which to evaluate the standard.

Mr. **Ottinger**. What criteria was adopted? Is a 1-percent energy saving significant, 10 percent, 50 percent?

How was that arrived at and when?

Mr. **Funk**. In the draft that was sent to OMB originally, that was later pulled back as legally insufficient, the draft did not attempt to make any findings of significance one way or the other.

It just said we are not addressing that issue here. As lawyers, we felt that that was not proper, not to address that issue. Therefore, I in consultation with members of the policy organization and the conservation organization, came up with what we believed was a legally defensible proposed series of tests and then——

Mr. **Ottinger**. Tell us what those are.

Mr. **Funk**. What is in the proposed rule?

Mr. **Ottinger**. What were the tests, and when were they established?

Mr. **Funk**. They were established sometime in early January or February 1982, and after those tests were determined, then the savings that were in the rule were tested against them to determine whether or not they were significant. But first came the test and then the determination of significance.

Mr. **Ottinger**. That was all done in January?

Mr. **Funk**. January or February, yes.

Mr. **Ottinger**. What standard was set?

Mr. **Funk**. The test, there were three separate tests. If you meet any one of the three tests, then savings are considered significant.

Mr. **Ottinger**. What are they?

Mr. **Funk**. The first test is whether or not a standard will result in a savings of 10,000 barrels a day of oil over the period 1987 to 2005.

The second test is whether over the period 1987 to 2005 the standard would be responsible for saving 1 percent of the electricity used over that period.

The third test is whether or not a standard for a product would save 20 percent of the energy that would have been used by that product, but for the standard, in the same timeframe.

Mr. **Ottinger**. Who made that determination with respect to these three tests?

Mr. **Funk**. It was a joint determination.

Mr. **Ottinger**. Of these three?

Mr. **Funk**. Ultimately decided by Mr. Tribble, but that was the recommendation.

Mr. **Ottinger**. Were those standards out for public comment?

Mr. **Funk**. They are now.

Mr. **Ottinger**. As a part of the overall determination with respect to the rule?

Mr. **Funk**. As part of the proposed rule, that is correct.

Mr. **Johnson**. Mr. Chairman, what you have in front of you is not a final decision in any respect by the Department.

It is a proposed rule, and this is the normal way we proceed. It is the statutorily required way.

Mr. OTTINGER. You say this was adopted in January or February and that is after the December rule was pulled back, because you felt it was not defined well enough?

Mr. JOHNSON. Well, I would say that was my decision on pulling back—because there was not a sufficient showing that the statutory tests were made.

We had not clearly laid it out to a reviewing body both in the general public and later, if this rule were to be finalized and litigated, so that a reviewing court would know what the agency's thought processes and data were.

Mr. OTTINGER. Since the time those criteria for what constitutes significant energy savings were established, was more than one recommendation made as to the rule? In other words, the different recommendations as to standards, were those made under these criteria or before these were accepted?

Ms. SAVITZ. We had made in the December 16 notice that we had written, the same decisions were made regarding what products, or that there would be no standards for any of the products that had been made in that draft.

Mr. OTTINGER. Were the various different decisions that were put forward all made under these three criteria mentioned by Mr. Funk?

Ms. SAVITZ. Our decisions previously, it had been decided we won't use the significant energy factor.

We use other factors, and then it was decided that was an additional factor that we looked at in January but we still were looking at each appliance with the same energy levels for each appliance that we had looked at prior to that.

Mr. OTTINGER. You only made a decision with respect to the economic savings?

Ms. SAVITZ. We looked at the law. The law calls for technological, feasibility and economic feasibility and energy savings, and we had looked at all of those without having a specific cutoff number that would be 10,000 barrels a day or not but looked at all of those.

Mr. OTTINGER. I see.

The only recommended standard that was made under these criteria was the "no standard" standard?

Ms. SAVITZ. Right, but before these three significant things, we had already made a determination of no standard.

Mr. OTTINGER. I understand that.

The GAO has decided the measures used and the way they were applied were inadequate. I take it you have looked over the GAO report. What is your reaction to it?

Mr. JOHNSON. We have just seen the GAO report and it is a document that we will review in the course of our rule-making responsibilities. We are not here at this time to debate the GAO on particular points.

There are a few general remarks that I think are not unfair to make. Specifically, in addressing your comment, the GAO felt that these particular tests were inadequate.

One of the principal points that is made in the GAO report concerns the validity of an algorithm that is used in the computer model put out by Oak Ridge.

It is important that everyone understand that the algorithm has been the same from beginning to end. It was used back in the original proposed standard back in 1978, and there has been no alteration of the basic concept.

It happens to be that this is the first time that the GAO has particularly drawn attention to it.

There was no change in the development of the proposed rule with regard to the use of that algorithm. It was the same both in January and June, 1980 and in the rule proposed recently.

The GAO also calls attention to the future energy prices, and as was made plain in the proposed rule, the model is extremely sensitive to how high energy prices will be in the future.

In developing the rule, we did use the most recent data available. That was the projections made by the Department in national energy plan No. 3.

As we go on, of course, and new data becomes available that is credible and reliable, we would intend to use that. But in our proposed rule, we used the data that was most recently available. We did not, in other words, freeze matters at 1978 levels, and move on from there only.

Beyond that, I don't think it would be appropriate for the Department as a rulemaking entity here to comment specifically; not only inappropriate, but also premature.

Mr. OTTINGER. The thing that concerns me, and I think we can properly go into this; the GAO says the Department used unvalidated assumptions and treated inconsistently in different places the effect of the market forces, and that there were high and changing energy price projections. They state, "All of the analytical basis for this proposal had the effect of enhancing the case of the 'no standards' determination."

Mr. JOHNSON. On each one of those matters, there was really no change between the 1980 approach and the 1982 approach.

On those issues, the Department adopted the same approaches that had been previously adopted, so there was no change in that respect, if you will, to reach a predetermined result which is what you may be searching for.

[The prepared statement of Mr. Johnson and Mr. Tribble follows:]

STATEMENT OF R. TENNEY JOHNSON, GENERAL COUNSEL, AND JOSEPH J. TRIBBLE, ASSISTANT SECRETARY FOR CONSERVATION AND RENEWABLE ENERGY

Mr. Chairman and Members of the Subcommittee, we are pleased to appear before you to address the preemption issues raised by your letter of May 7, 1982.

Section 325 of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, provides that the Secretary of Energy shall prescribe energy efficiency standards for each of certain major household appliances unless he determines that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified. Section 327 defines the effect of a Federal standard on State laws or regulations.

Section 327(a) provides that--

> This part supersedes any State regulation insofar as such State regulation may now or hereafter provide for-
>
> * * * * *
>
> (2) any energy efficiency standard or other requirement with respect to energy efficiency or energy use of a covered product-
>
> (A) if there is a standard under section 325 applicable to such product, and such State regulation is not identical to such standard
>
> * * * * *

Thus, the statute specifies that where a Federal appliance standard is applicable, any State regulation not identical to the Federal standard is preempted. Moreover, Section 325(b)(2) provides that a determination by DOE that no energy efficiency standard for a covered product should be prescribed also preempts any State energy efficiency standard or other requirement for that same covered product.

On April 2, 1982, DOE published in the Federal Register a proposal concerning energy efficiency standards. 47 Fed. Reg. 14424 (April 2, 1982). In it, DOE proposed a determination of "no standard" for eight covered products. 1/

1/ Those covered products are refrigerators and refrigerator freezers, freezers, clothes dryers, water heaters, room air conditioners, kitchen ranges and ovens, central air conditioners, and furnaces.

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The legislative history of NECPA and EPCA shows that Congress intended the regulatory system for appliance efficiency to free interstate manufacturers from conflicting or unduly burdensome State standards. Congress believed that the industry might be faced with substantial problems in designing and manufacturing products to meet a multiplicity of State standards. Accordingly, the Congress decided to delineate preemptive action in this field and determined to include those instances where the Secretary of Energy determined that no Federal standard should be prescribed for a covered product. A "no standard" determination, then, would have the same effect in preempting a State standard as would the establishment of an affirmative Federal energy efficiency standard.

Thus, if DOE were to adopt either the "no standard" proposal or any of the analyzed potential standards for the eight covered products, any State energy efficiency rule that was not identical would be preempted. However, the Federal preemption scheme does provide for the possible continuation of State regulations in certain circumstances. Under Section 327(b)(3), a State may petition the Secretary for exemption from preemption of its standards. The Secretary is to grant the exemption if he finds that there is a significant State or local interest to justify such State regulation, and that the State regulation contains a more stringent energy efficiency standard than the Federal standard, unless he finds that the State regulation would unduly burden interstate commerce.

In reviewing petitions, DOE will evaluate and analyze all factual and legal materials presented by the petitioners, any opposing parties, and all other interested parties. It is DOE's intention in applying Section 327 to determine whether a State standard unduly burdens interstate commerce by balancing the significant State interest in having a standard with the burden on interstate commerce created by the standard. In assessing the burdens of a standard, DOE will be guided by the principles of E.O. 12291 and the Regulatory Flexibility Act. The Secretary will assess whether the State has presented evidence of a significant State or local interest, and whether opponents of the State regulation have shown that the regulation unduly burdens interstate commerce. After this assessment, the Secretary will make a determination on each petition.

This framework, as it applies to preemption, would be modified by H.R. 6202. Section 1 of H.R. 6202 would strike the language in Section 325(b) of EPCA, as amended, that equates a "no standard" determination with an affirmative standard determination. 2/ Thus, in the event that the DOE's "no standard" proposal for the eight covered products is adopted, the bill would permit both existing and future State standards to be in effect and be enforceable.

After reviewing H.R. 6202, we have several comments. The bill as currently drafted would retain most of the Federal appliance standards program and, in fact, would retain Federal preemption of State standards upon the issuance of an affirmative Federal standard for a covered product. In this regard, we believe H.R. 6202 does not go far enough. Instead, we recommend repeal of the entire Federal appliance standards program. 3/ We now believe, subject to consideration

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2/ Section 2 of H.R. 6202 also would delete paragraphs (1), (2), and (5) of Section 327(b) of EPCA, as amended. Paragraph (1) currently allows a manufacturer to petition DOE for a rule to supersede a State standard when no Federal standard has been promulgated. Paragraph (2) provided that State regulations prescribed after January 1, 1978, were preempted. Its termination date, July 1, 1980, is found in paragraph (5). By striking paragraphs (2) and (5) of Section 327(b), H.R. 6202 would delete from the statute provisions that no longer have any legal affect.

3/ We are not recommending repeal of Sections 323 and 324 of the Act, which involve the testing and labeling of consumer products.

of the comments to be received in the rulemaking, that mandatory efficiency standards would place unnecessary restraints on appliance manufacturers and, in fact, would hamper the development of truly efficient products by restricting the innovation and creativity of the private sector. The Administration firmly believes that Federal intervention in the marketplace is generally ill-advised and that the effects of Federal regulation more often than not result in a loss of efficiency in the affected industry.

In addition, we note that H.R. 6202, in failing to repeal the entire Federal appliance standards program, and instead undertaking only a limited repeal of part of the preemption provisions, appears to be inconsistent with the purpose and intent of the original preemption section, which, as noted above, was inserted out of a concern for manufacturers confronting potentially varying State regulatory programs. In other words, partial repeal of the preemption provisions would appear somewhat at odds with Congress' prior structuring of the Federal appliance standards program.

However, we recognize that Congress' initial concerns may not have been altogether justified. Since the enactment of the Federal appliance standards law, States have operated many differing appliance efficiency programs with little apparent adverse effect on the industry. Many States have, in effect, adopted regulations governing certain appliances by regulations for new buildings based on heating, ventilating and air conditioning standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE Standard 90-75). States have also adopted regulations banning gas pilot lights or requiring intermittent ignition devices on gas appliances.

ASHRAE Standard 90-75 has been adopted in whole or in part by forty-seven States as their energy conservation code for new residential and commercial buildings. The equipment covered by ASHRAE Standard 90-75 consists of furnaces, water heaters and central air conditioners. In adopting ASHRAE Standard 90-75, States have made modifications, i.e., excluded residential buildings, updated lighting requirements, limited coverage to State buildings, and updated equipment efficiency requirements. 4/

In addition to adopting the ASHRAE standard, California, New York, Minnesota, and Kansas have promulgated appliance energy efficiency performance standards for some of the covered products. For example, California has established an energy efficiency program for refrigerators and freezers, mechanical comfort cooling equipment, furnaces and space heaters, water heaters, boilers and hot water storage tanks, clothes dryers, and kitchen ranges and ovens. Kansas has established standards for central air conditioners (which include room air conditioners installed through the wall by builders for new construction) and furnaces. Minnesota has set efficiency standards for room air conditioners. New York has adopted energy efficiency standards for room air conditioners and water heaters. Twelve States have also adopted prescriptive regulations for some appliances.

Despite the concern of manufacturers and Congress that many State regulatory schemes might unduly burden the industry, we have seen little evidence to support this concern. There has been no Federal preemption of State energy efficiency regulations for the last two years, and the industry appears to be adjusting to multiple State regulatory programs without any major problems. Manufacturers have been able to operate under these different regulatory schemes without any apparent harm occurring to the industry as a whole. It would thus appear that much of the original rationale for the adoption of a Federal standards program may no longer be valid.

4/ It should be noted that Federal preemption of State energy efficiency standards would not preempt any State regulation which set forth more stringent procurement standards for a State or local entity. Section 327(c).

Moreover, we believe that the petition procedure set forth in the Act is burdensome on the States and requires the commitment of scarce Federal resources to a process that does not appear to require close Federal scrutiny. We also believe that each State should be free to decide whether there are benefits to a regulatory program for appliances in its area that outweigh the burdens such a program would impose on its residents and taxpayers. Accordingly, although we again suggest repeal of the entire Federal appliance standards program, we do not oppose enactment of H.R. 6202.

As already stated, the DOE's proposal concerning energy efficiency standards for eight covered consumer products is currently the subject of a proposed rulemaking. We have been conducting hearings on this matter since Tuesday of this week and will be receiving comments on our proposal until August 1982. Before reaching a final decision on standards for those covered products, we will consider and review all comments and attempt to address those comments in the final rulemaking.

Mr. Chairman, this concludes our prepared statement and we would be pleased to respond to any questions that the Subcommittee members may have.

Mr. OTTINGER. Mr. Peach.

TESTIMONY OF J. DEXTER PEACH

Mr. PEACH. Mr. Chairman, if I could summarize, certainly I think our work does call into question the algorithm itself. As we stated in the report, we worked with the people at Lawrence Berkeley, and they attempted to validate that algorithm. They had trouble validating that people are going to purchase the more energy efficient prices on the basis of the market forces alone.

The empirical data and other things would not support that.

The model has been driven by the energy prices that you feed into it, so as the prices go up, the market does have a great effect. Our feeling from having examined the information fed into the model was that high price projections were used.

We include tables in the report that give some idea of how this works and what we would see as we use different price projections that we thought were more reasonable. There is always new data, and one of the things we have noted is that the Energy Information Administration has recently come out with a new report which has figures in it. In an early analysis, if you go back to the second analysis, June 1980, EIA numbers were used which are midrange for making that particular analysis.

In its recent report, the EIA midrange analysis shows a 19 percent real price increase for electricity through about the year 2005, 48 percent for natural gas and 108 percent for fuel oil.

I think it is interesting to note that the figures for natural gas and for electricity are lower by fairly substantial amounts than the figures that were used in the low range of the first analysis done by DOE when they first took a look at the standards area.

What it says, if you use those kinds of numbers, using the same kind of model, is you would get a much different kind of savings projection in terms of the numbers of quads that would be saved.

In terms of the way this was applied, they tended to apply it in a way that the market forces got full credit under a market base kind of scenario and the savings that would take place. When you went to a standard based scenario, they assumed there would be no other market force impact that would take place because of rising prices, so every thing was tagged onto the standard. That is what we saw in terms of the inconsistent application.

We think had it been applied in a similar manner on both sides, it would have resulted in a higher figure under the standards scenario.

Mr. OTTINGER. I am a little concerned, too, about the validity of assuming that price will in fact drive those results, because we have heard testimony that in fact price has not been driving the results, at least with respect to central air-conditioning, and we have the testimony from the Department itself, that since 50 percent of the people who buy these appliances are not the end users, that there are serious market imperfections.

Is it proper to measure this entirely against price, the effectiveness of the standards, reducing energy?

Mr. PEACH. Given available empirical data, I think it probably isn't proper to assume the kind of relationship that is assumed in that algorithm. There was a caveat that even the Oak Ridge people put into the backup documentation of that.

As I said, we attempted to validate it in doing our work, and we couldn't. If you take a look at empirical data, I will recite some numbers from the report. In the 1975-78 period, while you had a 40 percent real price increase in the gas area, the efficiency of the furnaces being purchased remained about the same; and for 1972-78, you had a 65 percent real price increase in gas and the efficiency of water heaters went up about 1.7 percent in terms of the appliances sold, so there was not very much of a relationship that existed in terms of the increased efficiency of appliances.

The other factor is the fact that many of these are being purchased not by the ultimate consumers, but by the builders. There is a good deal of evidence in that area about the extent to which they consider energy efficiency in their purchase decisions.

Mr. OTTINGER. I understand that one can assume that the higher the price, the greater the market drive is.

But it seems to me, the higher the price, the greater the price savings you achieve through adoption of the standards.

Was that fed into their calculation?

Mr. PEACH. Are you thinking, all right, the greater the price goes up, the greater the efficiency you are going to get, the greater the savings you are going to get?

Mr. OTTINGER. True, if you are saving 10 percent of $1,000 per year, it is quite different than if you are saving 10 percent of $2,000 a year.

Mr. PEACH. Is the consumer reacting fully that way with the full knowledge as to what he is getting in that situation? That is a part of the issue.

If in fact the consumers would act in a totally logical manner, I suppose you could say, if the labeling program was sufficient to get the information out to the ultimate consumer, you would have that kind of effect; but the data does not track that way, concerning how consumer decisions are made.

[Testimony resumes on p. 163.]

[Mr. Peach's prepared statement follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

STATEMENT OF

J. DEXTER PEACH

DIRECTOR, ENERGY AND MINERALS DIVISION

BEFORE THE

SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER

HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON

ENERGY EFFICIENCY STANDARDS FOR

HOUSEHOLD APPLIANCES

Mr. Chairman and Members of the Subcommittee:

We welcome the opportunity to be here today to discuss our recent report on the Department of Energy's (DOE's) efforts to develop appliance energy efficiency standards. 1/ Our report primarily focuses on the basis for DOE's April 2, 1982, proposal to establish no standards for eight appliances, but also discusses DOE's June 1980 appliance standards proposal and subsequent revisions to it, the implications a final no standards decision has for existing and future State appliance standards, and aspects of the Federal appliance labeling program. We are furnishing a copy of our report for the record.

1/"Appliance Efficiency Standards: Issues Needing Resolution By DOE," GAO/EMD-82-78, May 14, 1982.

As you are aware, the National Energy Conservation Policy Act (NECPA) directs the Secretary of Energy to prescribe efficiency standards, or make a no-standard determination, for each of 13 major household appliances. DOE's April 2, 1982, proposed rulemaking represents nearly 3 1/2 years of analysis and review. The current proposal is the second DOE appliance standards proposal; the first, made on June 30, 1980, contained standard proposals for the same eight products included in the current proposal.

My statement today briefly discusses our findings with respect to (1) the analytical methodology supporting DOE's current proposal, (2) DOE's revisions to its June 1980 proposal, (3) preemption of State appliance standards, and (4) the Federal appliance labeling program. Our report Digest, which contains more detailed information, is attached and should be considered a part of my statement.

METHODOLOGY

Based on our work, DOE's basis for its April no standards proposal is highly questionable. First, the analysis in support of DOE's proposal relies heavily on an unvalidated key assumption that consumers will purchase substantially more efficient appliances in response to increases in real energy prices. We found that actual consumer purchases of appliances during the 1970s--a time of rising real energy prices--did not support DOE's key assumption. Moreover, DOE's assumption seems to ignore the fact that home builders, who purchase many of the major energy-using appliances, are more sensitive to first costs than energy efficiency.

Secondly, DOE was inconsistent in considering the impact of market forces in its analyses. In estimating energy savings from imposing appliance standards, DOE projected a base (or market forces) case and a standards case for the period 1978-2005. DOE concluded that the difference in energy consumption under these two cases was the effect of appliance standards. However, we are concerned about the comparability of these two cases since, in the base case, consumers were projected to purchase more energy efficient appliances because of increasing energy prices, but in the standards case, consumers' purchase decisions were not affected by changing energy prices.

DOE also inconsistently treated market forces in its energy savings analysis and its financial impact analysis. We found that DOE, in estimating energy savings from standards, projected that market forces would result in significant improvements in appliances produced and sold. However, in estimating the cost and risk of appliance standards on manufacturers, DOE assumed that all the cost and risks involved in upgrading the efficiency of appliances produced were attributable to the imposition of standards. By not consistently treating market forces, DOE undermined the comparability of its different cases and the reliability of its conclusions.

Finally, DOE used four markedly different future energy price projections during the standards development process, and for the analysis supporting its current proposal, used future energy price assumptions significantly higher than other available estimates. When coupled with DOE's assumption about consumer responses to changes in real energy prices, these high energy price projections result in DOE forecasting that market forces would substantially improve the efficiency of appliances purchased by consumers without the imposition of standards.

Overall, DOE's analyses appeared to consider the impact of market forces only when such impact supported its no-standards proposal.

JUNE 1980 PROPOSAL

DOE significantly revised its June 1980 proposal to establish standards for eight products based on extensive comments from appliance manufacturers and the public. DOE's revisions addressed major concerns of the appliance industry as well as maintained standards for six appliances.

It appears as though the revised standard levels could have benefited consumers. In our view, the revised standards could have potentially saved about 10 percent of the energy consumed by these appliances in the year 2000. In addition, DOE's own analyses of the revised standard levels indicated that consumers would realize life-cycle cost benefits from purchasing appliances meeting the standards and, in most cases, would have recovered the higher initial cost of such appliances within 3 years.

These revisions, however, were never published for public comment because the administration decided to review the entire standards development process.

PREEMPTION AND LABELING

In our work, we looked at the implications a final no-standards decision would have for existing State appliance standards and the Federal appliance labeling program. We found that, because of the Federal preemption provisions of NECPA, a final no-standards determination would impact on energy conservation and utility load management efforts in many States.

Overall, 9 of 24 States we contacted told us they would likely petition DOE to exempt their programs from preemption. We also noted that efficiency standards for air-conditioning and water heating equipment have been incorporated into building codes in 49 States. Although the central air-conditioning standards are not very stringent, and their preemption would not significantly affect energy conservation efforts, preemption of the water heater standards would have an impact.

With respect to appliance labeling, we evaluated the extent that energy efficiency labels and fact sheets were being used in selling furnaces. We found that furnace customers were not requesting efficiency information, and heating contractors were not providing customers information required to be furnished to them under the appliance labeling program. Thus, at least with respect to furnaces, the major energy consuming appliance, labeling does not appear to be having any affect on consumer purchase decisions.

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That concludes my statement, Mr. Chairman. We will be happy to respond to questions.

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

APPLIANCE EFFICIENCY STANDARDS: ISSUES NEEDING RESOLUTION BY DOE

DIGEST

The National Energy Conservation Policy Act directs the Secretary of Energy to prescribe an energy efficiency standard for each of 13 major household appliances. No standard was to be prescribed which would not be economically justified, would not be technologically feasible, or would not result in significant conservation of energy. In assessing the economic justification of standards, the Secretary was directed to consider a standard's impact on, among other things, manufacturers, consumers, life-cycle costs, appliance usefulness, and national energy conservation. GAO undertook its review to provide information which would be useful to the Congress in deliberating a continued Federal involvement in energy conservation programs. (See pp. 1 and 2.)

The Department of Energy (DOE) published proposed rules on June 30, 1980, recommending standards for eight of the appliances. The proposal brought a strong reaction from manufacturers, who contended the standards would be too difficult to achieve and the proposed enforcement program would be unnecessarily burdensome. DOE revised its originally proposed standards and enforcement approach, but never published them for comment because the administration decided to review the entire standards development process.

DOE published new proposed rules April 2, 1982, concluding that no appliance standards be established. (See pp. 4 to 7.)

DOE'S ANALYTICAL BASIS FOR PROPOSING NO APPLIANCE STANDARDS IS HIGHLY QUESTIONABLE

DOE's no appliance standards proposal is based on economic analyses which were done using computer simulation models. GAO evaluated DOE's analytical efforts and concluded that the basis for DOE's proposal for no appliance standards is highly questionable. The analyses contain an unvalidated key assumption, are inconsistent in their treatment of the effects of market forces, and use high energy price projections. The potential impact of this is to decrease the energy savings from, and increase the costs of, appliance standards.

Unvalidated key assumption

The analysis supporting DOE's proposal relies heavily on an unvalidated key assumption that consumers purchase substantially more efficient appliances in response to rising energy prices.

DOE's assumption is not supported by available historical evidence, particularly for furnaces, central air conditioners, and water heaters. For example, despite a 40-percent increase in real natural gas prices from 1975 to 1978, the average efficiency of gas furnaces sold over these years remained essentially the same. In addition, from 1972 to 1978, gas water heaters improved only 1.7 percent while real gas prices increased about 65 percent. Moreover, DOE's assumption is questionable since builders purchase many major appliances and are more sensitive to initial costs than energy efficiency in making such purchases. (See p. 12.)

Inconsistent projection of the effect of market forces on achieving appliance efficiency

DOE inconsistently treated market force effects in projecting future energy savings from standards as well as in establishing the cost and risk to manufacturers from standards. By not consistently treating market force effects throughout its analysis, DOE has undermined the comparability of its different cases and the reliability of its conclusions. (See p. 13.)

Varying projections of future energy prices

DOE projected future energy savings from standards using four markedly different assumptions about future energy prices. In particular, the April 2, 1982, proposal is based on energy price projections which are significantly higher than other available estimates--78 percent higher for electricity, 12 percent higher for natural gas, and 25 percent higher for heating oil than the average increase projected by others. (See p. 14.)

DOE'S REVISED 1980 STANDARDS IS A POTENTIALLY VIABLE PROPOSAL

DOE revised its June 1980 standards proposal based on public comments. However, this revision was never published for comment because the administration decided to review the standards development process. The revision appeared to be a potentially viable standards proposal because it addressed major concerns of the appliance industry and contained standard levels which could benefit consumers. (See p. 18.)

GAO estimates that the revised efficiency standards could save about 10 percent of the energy consumed by six appliances in the year 2000. Essentially all of these savings would result from standards on furnaces, water heaters, central air conditioners, and refrigerators, major energy consuming appliances. Also, most of the revised standard levels would permit consumers to recover, in less than 3 years, the increased purchase price of appliances resulting from standards. (See p. 21.)

ISSUES RELATED TO A NO STANDARDS DETERMINATION

Two issues related to a no standards decision by DOE are (1) the implications such a decision will have for existing State appliance standards programs and (2) the extent to which the Federal appliance labeling program will, through enhanced consumer awareness, increase the number of high efficiency appliances being purchased.

By law a no standards decision by DOE preempts existing State appliance standards programs. Such a situation could adversely affect States which have standards programs or have promoted increased appliance efficiency through building codes. In addition, since the law provides that States may petition DOE for exemption from the no standards determination, a proliferation of divergent State standards could follow. (See p. 25.)

DOE expects that increased consumer awareness of appliance efficiency will result from higher energy prices in combination with the Federal Trade Commission's appliance labeling program. GAO's work indicates that the labeling program

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for furnaces--the largest single user of residential energy--is not likely to significantly affect consumers' purchase decisions and thus, increase appliance energy efficiency. GAO found that labeling was not working effectively for furnaces because the labels do not contain key data and few consumers have an opportunity to see comparative efficiency information before buying a new furnace. (See p. 27.)

RECOMMENDATION

GAO recommends that the Secretary of Energy make no decision on the need for appliance efficiency standards until he considers and resolves the issues raised in this report. In carrying out this recommendation, the Secretary should either demonstrate more conclusively for each appliance that a determination of no standard is justified or prescribe an appropriate energy efficiency standard.

AGENCY COMMENTS

To assure that information in this report would be available to the Congress and the public for DOE's May 1982 public hearings on its April 1982 no standards proposal, GAO did not obtain written agency comments. This action was consistent with a request by the Chairman, Subcommittee on Energy Conservation and Power, House Committee on Energy and Commerce. However, GAO gave DOE officials an opportunity to provide their views on the matters discussed in this report. DOE officials told GAO it would be inappropriate for them to discuss the report's contents since the report concerns a matter that is the subject of an ongoing rulemaking proceeding.

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Mr. **Ottinger**. Mr. Johnson or Mr. Tribble or Mr. Funk, what is your reply to the charge by the GAO that the price data was used inconsistently on the two sides of the equation?

Mr. **Funk**. We are hearing testimony and have just finished 3 days of hearings. A very central issue aired by many of the speakers was the algorithm of the implicit discount rate. This issue was specifically called out and discussed in both the economic analysis and NOPR.

Most of the people who have caught it have cited it back to us. It is not something we are trying to hide.

The point of the treatment, the way the market reacts, we will be looking at that as well and I expect we will continue to use the most recent price data, whether it is higher, lower or in between.

Mr. **Johnson**. We are not at this point trying to debate the GAO.

Mr. **Ottinger**. I want to know whether in fact the GAO has correctly identified the fact that these factors were inconsistently applied?

Mr. **Johnson**. Absolutely not, in terms of deliberateness.

Mr. **Funk**. Nobody pointed it out to us before. This is the way it was in the June 1980 model. It was done the same way there, and nobody has called it to our attention before.

Mr. **Ottinger**. Mr. Peach wants to comment on that.

Mr. **Peach**. I think this is worth at least placing on the record. We have been in effect working in this area for some period of time, tracking the area to some degree. If we go back to the June 1980 period when the people that were involved there that were developing the standard, some of our discussions indicated that they adopted, or they felt at that time, a conservative approach to looking at the standards issue. They even recognized some of the concerns with respect to that algorithm and the way they were feeding the information in so it was a conservative type of approach.

Essentially the price projections that are being fed into the model have changed over time, and that has been one of the key factors that has made the change and produced different information over. No doubt it has been applied in a similar manner and the feeling even back at that time was a conservative kind of approach but as the price projections have gone up, then the end result has changed.

Mr. **Ottinger**. How did you take into account the market imperfections or did you at all? The fact that the end user is not purchasing these products?

Mr. **Funk**. The market imperfections, third party purchases, are in the ORNC model. There are different discount rates for new building and replacement products but I am not a computer expert and our computer experts are mostly in Berkeley, so to try to explain how it is handled differently in the algorithm is something I am not familiar with.

Ms. **Savitz**. They do have a surrogate in the model to handle these different things.

Mr. **Ottinger**. How good is it?

Ms. **Savitz**. It is the same one that we have used all along. That is the point.

Mr. **Ottinger**. What is the Department's present position with respect to preemption? Do you support H.R. 6202?

Mr. JOHNSON. Our full statement has been placed in the record, if I might read a summary of our statement, you have permitted other witnesses to do that.

Mr. OTTINGER. It will appear in the record whether you read it or not.

Mr. JOHNSON. The Department does not oppose the enactment of H.R. 6202.

We would recommend that you go further and repeal the entire Federal appliance standards program. That comes as no surprise to you, I am sure.

We in particular endorse Congressman Moorhead's bill on this, and have so advised him, and we think that is a very favorable approach.

However, we do not recommend repeal of the provisions that involve testing and efficiency labeling.

We believe at the present time, and subject to consideration of comments that we have received and will receive in this rulemaking, that mandatory Federal efficiency standards place unnecessary restraints on manufacturers of major household appliances. The administration firmly believes that Federal intervention in the market is generally ill advised, and that Federal regulation more often than not results in a loss of efficiency in the affected industry.

The Department notes that automatic preemption of State regulations is not necessary in light of experience gained since enactment of Federal regulations. To date, States have operated many differing appliance efficiency programs with little apparent adverse effect on the industry,

I might note that our position on this was framed before the hearing that Mr. Funk has referred to, which was just completed, and at which some contrary views were represented.

We do say that at present, with no Federal standards in the market and with States free to adopt standards of their own, there has been little apparent adverse effect, and we have not known of many withdrawals from the market as you previously have determined.

Hence, we think that it is really appropriate for each State to decide whether the benefits of adopting a standard in household appliances outweighs the burdens imposed by way of setting up a bureaucracy, and possibly keeping some manufacturers from entering the market.

Mr. JOHNSON. We had to take the law as we found it. We are sensitive to State concerns here. We have tried to provide a reasonably easy method for States to seek exemption from the rules, should we adopt it.

Mr. OTTINGER. You have not issued regulations yet on that, have you?

Mr. JOHNSON. Yes, they are in the proposed rule—a procedure for States to seek exemption. We substantially simplified the requirements on States over those proposed in the June 1980 rule, so it is a relatively easy test for the States to come in and seek exemption from the rule.

Furthermore, excuse me?

Mr. OTTINGER. Go ahead.

Mr. **Johnson**. We also made a legal determination that preemption under the act would not take place on the publication of the final rule but rather on the effective date of that rule, and furthermore, to make it possible for States to seek exemptions, we provided in that rule that, where a State sought an exemption within the normal 6-month period before effectiveness would take place, we would postpone the effective date of the rule. Thus we did all we could, consistent with the statute as we found it, in proposing not to interfere with a State regulatory program.

Mr. **Ottinger**. It is clear that the appliance manufacturers are going to go in hollering that this is undue interference with interstate commerce.

It would seem to me that if you were really trying to facilitate the exemption procedure, you would put out some guidelines as to what would constitute an undue interference. "Unduly burdens interstate commerce," is the language.

You have to find also that there is no significant State or local interest, and it seems to me that that is not going to cause great difficulty, but what will is that such State regulation will be said to unduly burden interstate commerce.

The manufacturing folks will come in and say if we have had to make 16 different appliances for 16 different climates and States that will unduly burden interstate commerce, so there needs to be some guidance there that I take your proposed rule does not now provide.

Do you intend to provide it otherwise?

Mr. **Johnson**. We thought that, just as the Congress had some difficulty in setting up specifics and the courts have also found difficulty in construing interference with, undue interference, it would be best to proceed on a case-by-case basis.

We recognize, however, Mr. Chairman——

Mr. **Ottinger**. It is going to be political throughout that count, the bottom line?

Mr. **Johnson**. All the rules that the Department would come out with, including a decision to exempt a State, would have the effect of a rule and be subject to judicial review. If there is influence, that results in a decision that is not justified on the facts, then that would come out on judicial review and the rule would not be upheld.

Mr. **Ottinger**. Thank you.

Go ahead, you may finish.

Mr. **Johnson**. I think I have said enough.

Mr. **Ottinger**. The more you say, the better.

My understanding is that you have asked for no money for processing these State preemption applications for fiscal year 1983, no money is budgeted.

At the present time there is one secretary and three engineers devoted to this program. How can the States feel that you were really serious about processing applications diligently under those circumstances?

Mr. **Tribble**. It is true that the budget as submitted for 1983 does not contain a request for money for this purpose.

On the other hand, we feel that if in fact we do need to go forward with this, we will have to take appropriate action in the means of reprograming or some other means of having the resources with which to do so.

Mr. **Ottinger**. What is the time schedule that you now envision fop making the decision on the rule?

Mr. **Tribble**. We would hope to have the final rule out by October 1.

Mr. **Ottinger**. By October 1?

Mr. **Tribble**. Excuse me, October 29.

Mr. **Ottinger**. So that is the beginning of fiscal year 1983.

How do you propose getting money for the staff and office by October 1, so that between October 1 and 6 months from then you can process 50 State applications or 42 State applications?

Mr. **Tribble**. One of the ways we could do so would be to come in with a request for reprograming funds.

Mr. **Ottinger**. How long at the present time does it take to get staff approvals from the Department? How long does it take to get approval for additional staff for a department these days?

Mr. **Tribble**. That depends upon the agency to a large degree.

Mr. **Ottinger**. What would you say the average is?

Mr. **Tribble**. I don't know that we have had any experience recently on that with which to guide us.

Mr. **Ottinger**. Do you feel confident that you would be able to get sufficient staff in place to be able to do this?

Mr. **Tribble**. Yes, I do. I feel that we will be given adequate resources to do whatever is necessary to comply with the law, and that would be one of those things that we would need to do.

On the other hand, if the Congress sees fit not to put money into the program, we would naturally interpret that, we would not be able to take money from other places for this purpose.

We expect to have those, or we do expect to have the same people that we have now onboard at that time.

Mr. **Ottinger**. How many people who are qualified in this area does that constitute?

Mr. **Tribble**. I believe we said four.

Mr. **Ottinger**. They would have to process 40 applications and hold hearings on those 40 applications that are required within 6 months?

Mr. **Tribble**. I don't know that we would anticipate that we would have 40 immediatley.

Mr. **Ottinger**. Well, assuming you did, since over 40 States have standards that would be affected.

You have nowhere near the staff available to you at the present time to be able to process 40 or even 20 hearings?

Mr. **Tribble**. Mr. Johnson.

Mr. **Johnson**. That is an entirely fair question.

I think it is not unreasonable to use that as a consideration in determining when to adopt S. 6202.

Mr. **Ottinger**. H.R.

Mr. **Johnson**. I beg your pardon, a mental mistake, H.R. 6202.

We have made no secret that we regard the process set up in the statute as somewhat cumbersome from that standpoint but it is what we have to do under the statute.

Mr. OTTINGER. Mr. Tribble, do you intend to complete the analysis work on the other four products that remain as required by the statute?

Mr. TRIBBLE. As you know, we have requested no funds in the 1983 budget for that, and if no funds are provided, we would not have the people or the resources to go forward with that.

On the other hand, we do have a schedule set up whereby we will begin with the staff in this year.

Mr. OTTINGER. You would need again to get approval for transfer of funds, and for additional staff to carry out your statutory mandate, which I assume you wouldn't just ignore.

Mr. TRIBBLE. This raises the question that has been raised a number of times, and you are familiar with it, that if there is no money in the budget for a particular purpose, that we do not have the opportunities to take money from other sources without coming in for a reprograming.

Mr. OTTINGER. As you know, it is a matter of great concern to me, and I don't think it is cricket to try back-door repeal of acts of Congress by requesting no money for programs mandated by statute. If you want us to get rid of it, send it up to us, and we will act on it, and make the determination.

It seems to be quite improper to request no funds for things you ought to do and leave the statutory requirement there to be ignored.

Mr. JOHNSON. There is a vehicle for accomplishing the repeal that you mention, and that is Congressman Moorhead's bill.

Mr. OTTINGER. After this rulemaking decision, should you decide under the legal requirements of this act that you do have to promulgate standards, where is the money going to come from to carry that out?

Mr. JOHNSON. It will come in the same manner as I have indicated.

If necessary, if it can't be obtained through reprograming, we may have to seek supplemental appropriations and things of this sort. There are a whole host of means to accomplish the task that Congress requires. We hope it won't come to that, of course.

Mr. OTTINGER. That it won't come to what?

Mr. JOHNSON. The necessity to seek supplemental appropriations, and things of that sort.

Mr. OTTINGER. You are not prejudging the objective analysis about to take place on this rulemaking?

Mr. JOHNSON. Mr. Chairman, I believe that the actions of the Department in connection with this rulemaking have been objective, have been based on the data, and on the techniques that have been employed in the past; that there has been no action in regard to this rulemaking that ignored useful, relevant data in order to reach a judgment, no matter what.

Mr. OTTINGER. I wanted to give you that opportunity to protect your rear end.

Mr. JOHNSON. I appreciate it.

Mr. OTTINGER. All right. Now, what is your interpretation, Mr. Johnson, of the preemption? How far does it go? Would it invalidate the California standards with respect to, or the California legislation with respect to, their public service economics? What of the

State energy commission involvement, and their statement that their determination not to build more plants depends on energy savings that would come from these standards?

Mr. **Johnson**. We interpret the statute, and Mr. Funk can amplify on my remarks, to refer to a preemption only of requirements. Where there are voluntary programs of one sort or another, or programs put out by utilities under which utilities will assist consumers of efficient products to purchase them; such provisions are not preempted by any standard the Department might adopt.

Mr. **Ottinger**. What California has are mandatory appliance standards, and those mandatory appliance standards are part of a larger scheme.

Mr. **Johnson**. Right.

Mr. **Ottinger**. With respect to mandatory appliance standards, would the whole energy efficiency scheme, of which that is a part, also be preempted?

Mr. **Johnson**. We would take the position it would not, and we would not try to interfere with the working of a voluntary program under any basis.

Mr. **Ottinger**. California has both mandatory efficiency requirements and all kinds of efficiency codes that affect how buildings are built, all mandatory.

Mr. **Funk**. As we read the statute, it applies only to appliances and only to standards or requirements, so, to the extent that there are mandatory requirements with respect to like building shell energy efficiency, that would not be subject to the preemption.

Under one of the Florida standards that exists now, you have a choice, because you can either opt to have a minimum efficiency air-conditioner or have a building shell requirement. The minimum efficiency for the air-conditioner would be preempted, but the minimum efficiency for the shell would not be.

Mr. **Ottinger**. OK.

Mr. Peach, have you looked into this question at all? Do you have any opinions on the preemption?

Mr. **Peach**. Just a piece of data. You are talking about numbers of States. We contacted 24 States and there were nine that indicated that they would most likely seek a preemption under the situation, should DOE adopt a "no standard" standard.

Included were large States like New York and California that have a program.

Mr. **Ottinger**. Mr. Conover just testified to us that he contacted 25 States in his organization. You are going to get a substantial number of applications which, if you go forward with this, you will have to gear up for very rapidly. We will try to move the legislation rapidly, but seldom anything happens rapidly in this institution.

I will turn to my good counsel, and give her 10 minutes or so before we all expire.

Ms. **Freeman**. I would like to perhaps defer part of those 10 minutes, and note that there seems to have been a mild imbalance here in terms of time provided to representatives from the Department of Energy and from the GAO, and I wonder, Mr. Peach, if you and your colleagues want to add any additional remarks to those questions you responded to.

Mr. **Peach**. I suppose there is one point that we have not had a chance to hit, and that is worth bringing up. We have talked a little bit about what happens in the market. There was also another side of it, what kind of burden is placed on the industry as a result of the application of the standards. Another one of the things that we found interesting in terms of how the model was applied, was that in the standards case, all of the cost burden that occurred on the manufacturer came from application of the standards.

In other words, there was not any part of the assumption that said manufacturers would normally move and do something of their own volition as a result of rising energy prices. So there are also questions to the extent you look not only in terms of what will happen with consumers, but also on the side of the burden issue and how carefully that is calculated, in terms of how much burden.

Ms. **Freeman**. Thank you.

With respect to some of the other conclusions that you reached, would you, or Mr. Grace, or Mr. Libbey, care to address any of those?

Mr. **Libbey**. If you have specific questions, areas that you would like us to address?

Ms. **Freeman**. Perhaps you could address at least this point.

You conclude, and, in fact, you included on the front cover of the report, that a "no standards" decision, aside from being, as you put it, highly questionable, may adversely affect energy conservation and utility load management efforts in many States.

We have heard the State's comments regarding that issue, but in the report you did not go into it too extensively.

Could you provide any other information about that, either today or for the record?

Mr. **Libbey**. With regard to load management, we are primarily talking about the requirement for peak electricity generating capacity that is created by central air-conditioners in the summer months, and if California's standards on central air-conditioners or New York's or Florida's standards are to be preempted, this would apparently cause, according to the State energy officials we talked to, the need for additional generating capacity in those States to handle the peak demands in the summer.

The State of California is using projections of energy savings from its standards in forecasting the need for generating capacity; so they would have to change their forecasts and their plans for power plant siting, if their air-conditioning standard were preempted.

That is primarily what we were referring to there.

Mr. **Peach**. One of the figures that came out of the report in the discussions with California officials at least, they maintain that they felt the effect of standards had resulted in reducing their power needs by about 1,000 megawatts or the equivalent of one nuclear powerplant.

Mr. **Ottinger**. Mr. Johnson, you found that amusing.

It seems to me it is pretty good evidence that the standards work.

Mr. **Johnson**. I don't think I should comment at this point.

Mr. **Ottinger**. Mr. Tribble, do you think the California experience gives no evidence that standards will indeed have an effect on improving efficiency?

Mr. **Tribble**. I think we have heard conflicting information on that today actually from the people who are there. In some instances, they say that the standards have helped, and in other instances, they say they have not. I am sorry; I am not in a position to judge either.

Ms. **Freeman**. Some of the DOE panel may have heard questions when we spoke with the manufacturers earlier today, and I know the chairman asked you, Mr. Johnson, a couple of questions relating to communications with OMB.

Of course, we recall that in a June 29, 1981 policy office standards nonconcurrence memo that we quoted from in last July's hearing, it was stated, "It is certain that any proposal for substantive standards will receive scrutiny at OMB and elsewhere."

Aside from those communications which you refer to, what kind of scrutiny has this proposal received at OMB, and have any of the officials present been in communication either on occasion or regularly with OMB on this issue?

Mr. **Johnson**. The communications with OMB have been limited to those that we referred to.

In the case of the first submission, which I then withdrew—I communicated that I was withdrawing it and asked them not to give a statement on the subject. The later review of the rule resulted in some OMB comments, which we considered and we incorporated some of them.

I think probably most were incorporated, but they did not go to the substance, I would say, to the heart of the rule.

Mr. **Ottinger**. Thank you.

Ms. **Freeman**. The subcommittee would appreciate, gentlemen, if you could provide us with copies of any correspondence, notes from communications, and so forth, with the Office of Management and Budget.

Mr. **Ottinger**. Is there communication both ways?

Mr. **Funk**. Most of the communication with OMB goes from my office. Most of the communication is oral.

There are some documents in writing and, of course, we will provide them to you.

Mr. **Ottinger**. Good.

[The following letter was received. Attachments referred to may be found in subcommittee files.]

Department of Energy
Washington, D.C. 20585

June 2, 1982

Honorable Richard L. Ottinger
Chairman, Subcommittee on Energy
Conservation and Power
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During the appearance of Assistant Secretary Tribble and me before your subcommittee on May 21, 1982, you requested that we provide for the record copies of correspondence with the Office of Management and Budget (OMB) relating to the Appliance Standards Program. As we indicated during the hearing, OMB had provided some written comments on the draft Notice of Proposed Rulemaking (NOPR) submitted to it during March 1982 in accordance with E.O. 12291. These were in the nature of an informal note from an OMB staff person and handwritten mark-ups of certain pages of the NOPR. While we have been unable to locate our own copy of these comments, OMB retained a copy of the draft NOPR and its mark-ups. These are enclosed. OMB did not provide comments on the December 1981 draft NOPR because we recalled it before OMB had completed reviewing it.

In the interest of completeness, I am also enclosing a copy of drafts of a final rule and a fact sheet relating to the Appliance Program that OMB furnished to the Department (DOE) in January 1981, together with a copy of DOE's response. These drafts were sent before I was appointed General Counsel or Mr. Tribble was appointed Assistant Secretary, and I did not recall them in the context of questioning regarding activities of the Task Force (which was created in June of 1981) or the Office of General Counsel rewrite of the NOPR (beginning in late December 1981).

The January 1981 OMB drafts constituted a proposal for DOE to adopt a final rule stating that the DOE would not prescribe any standards in the Appliance Program. There were a number of legal problems with OMB's proposal, and DOE declined to adopt it. DOE instead announced that it would fully assess the analysis upon which the original, June 30, 1980 proposal had been based. That assessment and the conclusions we drew from it, not any directive from OMB, resulted in the current Notice of Proposed Rulemaking.

Sincerely,

R. Tenney Johnson

R. Tenney Johnson
General Counsel

Mr. **Ottinger**. How did it go orally?

Mr. **Funk**. They had some comments. They said it was a lot better than the first time.

Mr. **Ottinger**. At any time, did they direct that standards proposed by the Department be changed?

Mr. **Funk**. Not to my knowledge. The time I was working on it, there was never any departmental proposal for a standard.

Mr. **Johnson**. I don't know of any either. I did receive one call that asked where was the rule? They wanted to see it, but I said here is what our schedule is.

They said, well, we will put it on our tickler file and call you again. Luckily, we got it to them one day ahead of their tickler file.

Mr. **Ottinger**. Your testimony is that the Department made this decision, and that OMB did not make the decision?

Mr. **Johnson**. That is our testimony, and that is the truth.

Ms. **Freeman**. I would like to ask you about a few of the conclusions that were reached and included in the Federal Register notice of the proposed rule.

These could be responded to now or at some later point in writing.

I don't know if you want to refer to your notice, on page 14432, where you say DOE believes that impact of standards on lower income persons is important, even it the number of such persons is relatively small compared to the total number of persons affected by standards.

There are a number of references throughout the proposed rule, on a product-by-product basis, to the assertion that the impact of standards will be greater on lower income persons.

Could you provide to the subcommittee any data, any documentation to support that?

Mr. **Funk**. That data is in the economic analysis document in appendix J.

Ms. **Freeman**. Beyond that?

Mr. **Funk**. No other documents at this time.

The final rule will have all the documentation, but we are receiving documents all the time.

Ms. **Freeman**. Is not the analysis that was done on that based upon life-cycle costs rather than a discussion of impacts on the poor, the proposal being the impact of first cost, for which I don't believe any analysis was performed?

Mr. **Funk**. I am not sure I understand the question.

Ms. **Freeman**. The analysis of the effect, the impact of the standards on lower income people. Was that analysis based on life-cycle costs, operational costs, or first costs?

Mr. **Funk**. The result of increased first costs because of the price elasticity for people in certain income groups resulted in a decreased number of appliances being bought by the low-income people.

Ms. **Freeman**. The analysis was based on first cost?

Mr. **Funk**. That is my understanding. We can all read appendix J and decide that.

Ms. **Freeman**. You also say on that same page at the top that when you are speaking of expenditures by manufacturers on energy efficiency improvements dictated by standards, more prompt investments may be foregone, and you go on to say, "DOE believes that this could result in reduced productivity, reduced energy efficiency in the manufacturing sector or the foregoing of possible new utility performance and features of the product."

Again, I wonder if you can provide us with the data to support those statements, or do you feel that that is adequately disposed of in the economic analysis document?

Mr. **FUNK**. I did not find where you were reading, but it started with DOE believes?

Ms. **FREEMAN**. Correct.

Mr. **FUNK**. When we say "we believe," it means we did not necessarily have data to support something. That can mean many things; we believe the Sun will come up in the morning. Some of these beliefs may be less verifiable. We are receiving information in the course of the rulemaking, of course, that will bear upon this.

Mr. **JOHNSON**. As a general truism, regulation results in lower productivity. I think any number of economists will testify, not in particular relation to specific appliances, but that there is really a generalism, not specifically related to this—often referred to as the dead hand of Government regulation. That expression did not come about out of nothing. In many cases Government regulation does result in phenomena that are opposite from what was intended because people do not behave the way bureaucrats think they should. They find ways around. I am talking philosophy now.

Mr. **OTTINGER**. The thing that I suppose bothers me is that so much of what has been done has been done on the basis of philosophic belief without even an investigation as to whether or not that belief is borne out by the facts, such as the belief that conservation will be adequately taken care of by the marketplace.

That has been pursued even where it has been shown that it will not be taken care of by the marketplace, the clearest example being low-income people.

They get the right signals, but they can't do anything about it, so there has to be some means of helping low-income people to be able to weatherize their houses and not zero that out on the basis of belief, and without any indication that the market would take over that function. I find that bothersome.

My first communications with the Secretary were to ask him to do program cost analysis, and where it was shown to be ineffective or wasteful, then we would be delighted to throw it out. The Secretary assured me that he did not. I think there was a predetermination made that this particular set of regulations was unwarranted, and then great effort was made to try and prove that.

That is not the way it ought to be done. Inefficient regulation ought to be gotten rid of. Regulation which in fact serves the interest of the country in important ways ought to be pursued.

I don't think that purpose has really been carried out.

Ms. **FREEMAN**. One last comment. I certainly agreee with you, Mr. Johnson, about the fact that things can occur that are the opposite of what was expected, because certainly when Congress wrote this law, it was anticipated that standards would be prescribed for certain products, and that is not coming to pass.

Mr. Funk, with regard to your comments about the reference to DOE beliefs, and so forth, that these things are not always verifiable, I expect, then, that that means that in the various places throughout the proposal where we find such assertions as DOE believes the market will respond more quickly, or DOE expects market failure to diminish greatly, or DOE expects the appliance market will respond swiftly in the level of energy efficiency, and so forth, that you are waiting for some divine word on this, and that you do not have any verifiable data?

Mr. **Funk**. All the data that we have is in the economic and engineering analyses documents, so if you don't find a basis for statements made in the NOPR in those documents——

Ms. **Freeman**. Then it is not in the historical evidence, or you would have included it?

Mr. **Funk**. There are certain things which the record will support or not support in terms of this rulemaking, but there is something that strikes me. There is always a belief that you can't make a decision unless it is based on data. I hear it sometimes in the hearings. I hear it in other places as well.

There are certain things for which there just aren't data, and a lot of them are predictive. Anything that is predictive, where you have a computer and it gives you numbers, that is not data. Ultimately good judgment is going to be at least as important as whatever data is in the record, and for that, we will be relying not only on our own judgment, but the judgment of the people who comment.

Ms. **Freeman**. Absolutely. Then I suppose we will have to trust to your good judgment.

Thank you, Mr. Chairman.

Mr. **Ottinger**. All right. We thank our witnesses today.

The hearing is adjourned.

[Whereupon, at 1:55 p.m., the subcommittee adjourned.]

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